113-59

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~4023.~~ ~~672~~ ~~388~~ 76

DAVID F. HOLLISTER, COLLECTOR OF INTERNAL REVENUE, APPELLANT,

vs.

THE BENEDICT AND BURNHAM MANUFACTURING COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

FILED OCTOBER 12, 1881.

SUPREME COURT OF THE UNITED STATES.

No. 1023.

DAVID F. HOLLISTER, COLLECTOR OF INTERNAL REVENUE, APPELLANT,

vs.

THE BENEDICT AND BURNHAM MANUFACTURING COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

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1 THE BENEDICT AND BURNHAM MANUfacturing Company
vs.
DAVID. F. HOLLISTER.

To the honorable the Supreme Court of the United States:

The appeal of David F. Hollister, the above-named defendant and appellant, respectfully showeth.

That on the 7th day of June, 1878, the above-named complainants filed their bill in the circuit court of the United States for the district of Connecticut against the above-named defendant and appellant therein, alleging that on the 3rd day of August, 1869, one Edward A. Locke obtained letters patent of the United States bearing that date and numbered 93391, for a new and useful improvement of a revenue stamp for barrels, and identifying marks, labels, or stamps for revenue purposes, securing to him and his assigns the exclusive right to said improvement for the term of seventeen years from said date. That on the 10th day of November, 1875, the complainants became the assignees and owners of said letters patent by deed of assignment from said
2 Locke, and further alleging that the defendant, well knowing the premises, had unlawfully infringed upon the exclusive rights secured to the said complainants by said letters patent, and praying for a decree of injunction and account as by reference to said bill will more fully appear. And the said defendant on the second day of December, 1878, filed his answer to said bill of complaint admitting the issue of said letters patent to said Edward A. Locke, as alleged in said bill, but denying infringement; and also denying that said Locke was the original and first inventor of the improvement in said letters patent described, and further alleging that the defendant was a collector of internal revenue, and that all revenue stamps used by him were furnished to him by the Bureau of Internal Revenue, and used by him as said collector under direction of the Commissioner of Internal Revenue, as by reference to said answer will more fully appear.

To which answer the complainants filed their replication, and the cause being at issue the parties proceeded to take testimony in support of their respective allegations, and at the September term of said
3 circuit court, 1879, were fully heard by their counsel, and at the said September term of said court a decretal order for an injunction and account was entered referring said cause for the taking of the account to a master, and the cause was continued for the master's report, and thereafter at the April term, 1881, the master's report came in. That at a stated term of said circuit court held at New Haven, on the fourth Tuesday of April, 1881, a final decree was made and pronounced in the cause, wherein it was ordered, adjudged, and decreed:

1st. That the master's report be accepted.

2d. That the complainants recover of the defendant nominal damages, to wit, the sum of one dollar.

3rd. That complainants recover of the defendant their costs to be taxed.

4th. That the order for a perpetual injunction be no longer stayed, unless an appeal is taken and perfected by the defendant to the Supreme Court of the United States, within two months from the date of said decree, to wit, from the first day of August, 1881, said appeal to be taken to the October term, 1881, of said court.

Whereupon this appellant appeals from the whole of said de-

4 cree of said circuit court of the United States, and respectfully prays that the decree of the said circuit court and the bill, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court and every part thereof, may be reversed and a decree made reversing said decree with costs, or such other decree as to the said Supreme Court may seem fit.

Dated at Hartford this 18th day of August, 1881.

DANIEL CHADWICK,
U. S. Attorney, Solicitor for Appellant and of Counsel.

5 Supreme Court of the United States.

THE BENEDICT & BURNHAM MANUFACTURING Company
vs.
DAVID F. HOLLISTER. } In equity.

Know all men by these presents that we, David F. Hollister, of Bridgeport, Conn., and Wm. H. Kelsey, of Bridgeport, Conn., are held and firmly bound unto the Benedict and Burnham Manufacturing Company in the sum of three hundred dollars, to be paid to the said Benedict and Burnham Manufacturing Company, its successors and assigns, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our, heirs, executors, and administrators, firmly by these presents, sealed with our seals, dated this 17th day of August, 1881.

Whereas the above-named David F. Hollister, defendant in above entitled cause, has taken an appeal to the Supreme Court of the
6 United States to reverse the decree rendered in said cause by the honorable circuit court of the United States for the district of Connecticut at its April term, 1881:

Now, therefore, the condition of this obligation is such that if the above-named David F. Hollister shall prosecute said appeal to effect and answer all costs and damages, if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

DAVID F. HOLLISTER. [L. S.]
WILLIAM H. KELSEY. [L. S.]

Witnesses:
LEVIS M. SEELEY.
S'M'L S. MARSH.

Bond approved.
Hartford, Aug. 18, 1881.

N. SHIPMAN,
District Judge.

7 United States circuit court, district of Connecticut.

THE BENEDICT & BURNHAM MANUFACTURING Company
v.
DAVID F. HOLLISTER. } In equity.

By the Hon. Nathaniel Shipman, one of the judges of the circuit court of the United States for the district of Connecticut, in the second judicial circuit of the United States.

To the Benedict & Burnham Manufacturing Company, greeting:

Whereas David F. Hollister, the defendant herein, hath lately appealed to the Supreme Court of the United States from the final decree lately rendered and entered in the above cause in favor of you, the said The Benedict and Burnham Manufacturing Company, and hath filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court of the United States, at the city
8 of Washington, in the District of Columbia, on the second Monday of October, A. D. 1881, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Hartford, in the district of Connecticut, in the second circuit, this 18th day of August, A. D. 1881.

N. SHIPMAN,
One of the Judges of the Circuit Court for the District of Connecticut.

WATERBURY, CONN., *Aug. 31st*, 1881.

Due and legal service of the above and foregoing citation is hereby acknowledged.

THE BENEDICT & BURNHAM MANUFACTURING COMPANY,
By S. W. KELLOGG,
Their Attorney, and of Counsel.

The record of the said cause, including the pleadings, proceedings, evidence, opinion, and decree, whereof mention is therein made, follow in these words, viz:

9 Be it remembered that on the 7th day of June, 1878, there was filed in court a bill in equity, in the words and figures following, viz:

Circuit court of the United States, district of Connecticut. In equity.

BENEDICT & BURNHAM MANUFACTURING CO.
vs.
DAVID F. HOLLISTER. } No. 100.

Bill of complaint.—June 7, 1878.

To the honorable the judges of the circuit court of the United States for the district of Connecticut, sitting as a court of equity:

The Benedict & Burnham Manufacturing Company, a joint stock corporation organized under the laws of the State of Connecticut, and located at Waterbury, in New Haven County, in said State and district, bring this, their bill, against David F. Hollister, of Bridgeport, in the county of Fairfield, in said district, collector of internal revenue of the United States, and thereupon your orator complains and says:

1st. That heretofore and before the 3d day of August, 1869, Edward A. Locke, of Boston, in the State of Massachusetts, became and was the original and first inventor of a new and and useful improvement of a revenue stamp for barrels, and identifying marks, stamps or labels for revenue purposes, and duly applied for letters patent therefor, and after due proceedings had, letters patent of the United States were duly issued to said Edward A. Locke, for the said invention, dated on said 3d day of August, 1869, numbered 93,391, thereby granting to said Edward A. Locke, his heirs, executors, administrators and assigns, for the term of seventeen years thereafter, the full and exclusive right and liberty of constructing, using and vending to others to be used, the said invention as described in the schedule annexed to, and forming part of, said letters patent, which said letters patent, or a certified copy thereof, complainant will produce as your honor shall direct.

2d. That thereafter, and on the 10th day of November, 1875, the said Benedict & Burnham Manufacturing Company became and was the assignee of said letters patent, by deed of assignment from said Edward A. Locke, duly executed and recorded in the Patent Office at Washington, according to law.

3d. That the said Edward A. Locke and his assigns, and said Benedict & Burnham Manufacturing Company, since said assignment have, since the issuing of said letters patent, been exclusively possessed of the same and of the invention thereby secured, and by himself and his assigns has put the same in practice and made and sold revenue stamps constructed according to the invention described in said letters patent; and the exclusive rights thereby secured have been generally respected.

4th. But your orator is informed and believes, and therefore charges, that said David F. Hollister, since the date of said assignment to said corporation, and at said Bridgeport, has made, used, and sold great numbers of revenue stamps made, arranged, constructed and combined, according to the principles, construction, arrangement and combination set forth, shown, and described in said letters patent, without license or permission of your orator, and contrary to and in infringement of his rights, and your orator fears that he will continue said infringement to the great and irreparable damage of your orator.

Wherefore, that the said defendant may answer the premises; may be enjoined from the practice of said infringement pending this suit; may be perpetually enjoined from said infringement; may account to your orator for the gains and profits made by him from the manufacture, use, and sale of articles infringing said right; and may pay damages to the complainant to the amount of ten thousand dollars, and for other relief:

May it please your honor to grant to your orator:

1st. A writ of injunction conformable to the prayer of this bill, until further order of the court.

2d. A writ of perpetual injunction.

3d. A writ of subpœna.

Each in due and usual form and under usual penalties, and each directed to the said David F. Hollister.

And your orator will ever pray, etc.

BENEDICT & BURNHAM M'F'G CO.
CHAS. DICKINSON, *Sec'y.*

STEPHEN W. KELLOGG,
JOHN S. BEACH,
Solicitors and of Counsel.

11 UNITED STATES OF AMERICA,
District of Connecticut:

Charles Dickinson, secretary of the Benedict & Burnham Manufacturing Company, the complainant in this bill, being duly sworn, deposes and says that he has read the bill and knows the contents thereof, and the same, except the matters stated on information, are true, and the rest he believes to be true.

CHAS. DICKINSON, *Secretary.*

Subscribed and sworn to before me this 9th day of May, 1878.
[L. S.] CHAS. G. ROOT,
Notary Public.

And on the same day a writ of subpœna issued out of court, directed to the said defendant, which was duly served and returned, and which, with the return of service endorsed thereon, is in the words and figures following, viz:

12 [L. S.] The President of the United States of America to the marshal of the district of Connecticut, sendeth greeting:

You are hereby commanded to summon David F. Hollister, of Bridgeport, in the county of Fairfield, in said district, collector of internal revenue of the United States, in the State and district of Connecticut, to appear before the judges of the circuit court of the United States of America, for the district of Connecticut, in the second circuit, in equity, on the first Monday of July, 1878, wheresoever the said court shall then be; to answer a bill of complaint exhibited against said David F. Hollister in said court by the Benedict & Burnham Manufacturing Company, a joint stock corporation, organized under the laws of the State of Connecticut, and located at Waterbury, in New Haven County, in said State and district, and then and there to answer the same; and to do and abide by what said court may order and decree in the premises.

Make due service and return, at least twenty days before said first Monday of July, 1881.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Hartford, this 7th day of June, A. D. 1878.

E. E. MARVIN, *Clerk.*

The defendant is required to enter his appearance in said cause, in the clerk's office of said court, on or before the day at which this writ is returnable, or, by the rules of said court, said bill will be taken as confessed.

E. E. MARVIN, *Clerk.*

KELLOGG & TERRY,
Complainant's Solicitor, Waterbury, Conn.

UNITED STATES OF AMERICA,
District of Connecticut, Fairfield County, ss:

BRIDGEPORT, *June* 8, 1878.

Then and there I served the within writ, by delivering to and leaving with the wife of the within-named defendant a true and attested copy hereofat his usual place of abode.

Attest: JOS. D. BATES,
U. S. Marshal.

Fees: Service, 2.00; copy & end., 1.00; travel, 6.72—9.72.

No. . United States circuit court, district of Connecticut. In equity.
against . Writ of subpœna.
Issued 187 , returnable rule day, 187 .

13 And on the same day Messrs. Kellogg & Terry entered their appearance for the complainant, and on the 25th day of July, 1878, Calvin G. Child, esq., entered his appearance for the defendant.

And on the 2d day of December, 1878, the respondent filed his plea to said bill of complaint in the words and figures following, viz:

United States circuit court, district of Connecticut.

BENEDICT & BURNHAM M'F'G CO. / *vs.* / DAVID F. HOLLISTER, COLLECTOR. } Internal revenue. In equity.

The plea of the above-named David F. Hollister to the bill of complaint of the above-named Benedict and Burnham Manufacturing Company against him in equity exhibited.

This defendant, by protestation, not confessing or acknowledging all or any part of the matters and things in the said bill of complaint contained to be true, in manner and form as the same are therein set forth, for plea, nevertheless, to the said bill, doth plead and aver:

That said complainant, as alleged in said bill, is a joint stock corporation of the State of Connecticut, but by its terms of incorporation
14 has no power to own, deal in, or do any act under or by virtue of any such patent as that set forth in said bill of complaint, and possesses no rights in, or by virtue of, any assignment or any ownership, interest in or title to such patent, or the rights thereby granted; and has no right, power, or privilege thereunder; and no power to prosecute any action before this court for any infringement of said patent, or any rights thereby granted or secured to its assignor, for the reason that said assignment passed no rights to the complainant, said complainant being a joint stock corporation, with power only to "manufacture and deal in buttons, sheet and rolled brass, brass and copper wire, German silver, and all other metals; and also, to deal in buying and selling goods and merchandise," but having no authority in law to own any such patent-right as that alleged by it to be infringed, or to have any privileges or rights therein, or any profits therefrom, or grant any privileges or rights thereunder.

Wherefore said David F. Hollister prays judgment of this court
15 whether he shall be compelled to make any further or other answer to the said bill of complaint, and prays to be dismissed with his reasonable costs and charges in this behalf sustained.

DAVID F. HOLLISTER,
Collector as aforesaid.

CALVIN G. CHILD,
Respondent's Solicitor.

I, Calvin G. Child, of counsel for the above-named David F. Hollister, hereby certify that the above plea, in my opinion, is well founded in point of law.

CALVIN G. CHILD.

DISTRICT OF CONNECTICUT,
Bridgeport, November 20th, 1878.

Personally appeared David F. Hollister, who being duly sworn, did depose and say that the foregoing plea is, as he is informed and believes, true in fact, and is not interposed for delay.

Before me,

MORRIS W. SEYMOUR,
U. S. Commissioner.

16 And on the 2d day of December, 1878, defendant filed his answer in the words and figures following, viz:

U. S. circuit court, district of Connecticut.

THE BENEDICT AND BURNHAM MANUFACTURING COMPANY
v.
DAVID F. HOLLISTER, COLLECTOR OF THE INTERNAL REVENUE OF THE UNITED STATES. } In equity.

The answer of David F. Hollister to the bill of complaint of the above-named petitioner hitherto filed in this court.

The respondent, now and at all times reserving unto himself all benefits and advantages of exception which may or can be had to the many errors, uncertainties, and other imperfections in the said petitioner's bill contained, for answer thereto, or to so much and such part thereof as your respondent is advised is or are material for him to make answer unto says:

First. That any and all acts complained of in said bill by the said petitioner as done by the respondent were done and performed by him in the discharge of his duties as collector of internal revenue for the United States for a designated collection district of the State of Connecticut, and by direction of the Commissioner of the Internal Revenue, an officer of the Treasury Department of the United States; that any revenue stamps by him used have been furnished by the Bureau of Internal Revenue, of which said Commissioner is the official head, for use in the discharge of said duties as collector, and the same have been used solely as a means of collecting the taxes due to the United States, which said taxes have been imposed by the laws of the United States and the manner of said collection as followed by said collector, regulated and authorized by such laws; that said respondent has acted as such collector by virtue of legal appointments thereto by the President of the United States, duly confirmed by the Senate of the United States for and during all the times mentioned in said bill of complaint.

17 Second. And your respondent says that the only way in which he has used revenue stamps as complained of by the petitioner is in the supply and sale of the same to persons liable to tax, as such collector, and that such stamps so sold are prepared by the Treasury Department of the United States, and that the supply and sale of said revenue stamps by said collector as aforesaid, as he is informed and believes, is a right appertaining to the proper collection and enforcement of a tax due the United States, and is not a right capable of being secured to any individual by virtue of any patent or otherwise.

Third. And the respondent further says tha the is informed, and believes it to be true, that one Edward A. Locke, as in said bill set forth, did obtain letters patent for a claimed invention as in the specification

of said letters patent set forth, to which, when produced by said petitioner, your respondent begs leave to refer, but he denies that the use of stamps by him as such collector, complained of in said bill, is in any way an infringement upon any rights granted thereby.

Fourth. And the respondent further says, as he is informed and believes, that the claim made by said Edward A. Locke, as to the invention by him made upon which said letters patent were granted and referred to in said bill is not for the invention or discovery of any useful art, machine, manufacture, or composition of matter, or any new or useful improvement thereof, nor for any new or original design by law authorized to be patented, and that the same is not patentable under the laws of the United States.

Fifth. And the respondent further says on information and belief that so much of said claimed invention as relates to the cancellation, affixing, and removal of stamps and identification of packages is not patentable by the laws of the United States.

Sixth. And the respondent further says that he is informed and believes it to be true that said Locke was not the original and first inventor or discoverer of the thing or improvement alleged and claimed by said bill to have been patented, or of any material and substantial portion thereof; and pursuant to the form of the statute in such case made and provided, the respondent hereby gives notice that the said alleged improvement was, as this respondent is informed and believes, substantially invented and discovered by and known to the persons following, prior to the supposed discovery and invention thereof, by said Locke, to wit:

1. Edward Harmon, who resides, or did reside in 1862, at Washington, D. C.

18 2. Walter E. Walters, who resided, or did reside in 1863, at Lockport, N. Y.

3. George W. Bowlsby, who resides, or did reside in 1862, at Monroe, Michigan.

4. Addison C. Fletcher, who resides in the city of New York.

5. George Tomlinson Bonsfield, who resides, or did reside, in Bonsfield, England, in 1863.

6. Spencer M. Clark, who resides, or did reside, in the city of Washington, on the 21st day of June, 1869.

7. George S. Wardwell, who resides, or did reside, in the city of Boston, in the year 1854.

8. To Marcus P. Norton, who resides, or did reside in the year 1863, at Troy, N. Y.

9. To George N. Pennepacher, who resided in the year 1868 in Philadelphia, Penn.

That such alleged improvement had been patented before the supposed invention or discovery thereof by said Locke, to wit, in the United States:

1. By letters patent issued to said George W. Bowlsby, dated Dec. 26, 1865, and numbered 51782.

2. By letters patent to Addison C. Fletcher, dated June 8, 1869, and numbered 91108.

3. By letters patent to Adolphus S. Solomons, as assignee of Spencer M. Clark, dated Dec. 21, 1869, and antedated June 21, 1869, and numbered 98031.

4. By letters patent to Edward Harmon, March 22, 1864.

5. By letters patent to Albon Mann, Sept. 3, 1867.

6. By letters patent to Geo. W. Bowlsby, dated July 14, 1869, and numbered 79806.

7. By letters patent to C. F. Harris, dated Nov. 15, 1867, numbered 45038.

8. By letters patent to R. J. Kellett, dated May 28, 1867, numbered 67090.

9. R. De Roode, letters patent dated Dec. 3, 1867, numbered 71590.

10. By letters patent to R. J. Kellett, dated June 23, 1868, numbered 79232.

11. By letters patent to R. M. Stow, dated Dec. 29, 1868, numbered 85409.

12. By letters patent to C. W. Saladee, dated April 27, 1869, being No. 89507, for envelopes.

19 13. By letters patent to Klaucke & Frazer, dated April 6, 1869, and numbered 88722, for envelopes.

14. In England, by letters patent to George Tomlinson Bonsfield, dated February 4, 1863, and numbered 314.

And also, in England, by letters patent to Edward Wilkins, dated May 13, 1851, and numbered 13631.

And also, in England, by letters patent to Archille Victor Pinter, dated August 15, 1858, and numbered 1880.

To T. F. Chorley, in the year 1858, Nos. 1610 and 1627.

To D. O. Duke, of Kensington, England, in 1858, being No. 1884.

That the claimed invention and improvement of said Edward A. Locke had been described in a certain printed publication, to wit, in the bound volume of the library of the United States Patent Office of the specification and drawing in the matter of the English letters patent granted George Tomlinson Bonsfield, dated February 4, 1863, No. 314; and also in bound volumes of English patents for the year 1863, in the Astor Library of the city of New York; and also in bound volumes in the Patent Office of the United States of America of English patents to E. Wilkins, of London, in the year 1857; to A. V. Pinter, of London, in the year 1858; and to the provisional specifications of T. A. Duke, of Kensington, in the year 1858; and of T. F. Chorley, of London, in the year 1858.

Seventh. And, further answering, your respondent denies that he is now using, and that he has ever used, the alleged invention which is described in the letters patent that are referred to in the said bill, and that he is now using and that he has ever used any stamps constructed according to and containing and embodying said alleged invention or alleged improvement, and that he is now using and that he has ever used any stamp or stamps that was or were constructed according to the specifications, claims, and drawings of said alleged letters patent, and that he has ever infringed upon any right or rights, privelege or privelges, alleged in said bill to have been secured to said petitioner by said letters patent.

Eighth. And, further answering, your respondent says that he has no knowledge whether or not the improvement alleged in said bill to have been patented is useful or valuable, but that he does not believe the same to be of any practical use or value, and therefore leaves the petitioner to make such proofs of the allegations in that behalf in the said bill contained as it may be advised; and, further answering, this respondent denies that he has ever derived or obtained, and that he is now deriving or obtaining, any personal profit of any kind

20 whatsoever from the use of such stamps, and of such sort or kind of stamps as this respondent is now using, or has at any

following, taken in connection with the drawings which accompany and form part of this specification, is a description of my invention sufficient to enable those skilled in the art to practice it.

This invention is designed more especially for use in sealing liquor-casks with identifying marks or labels for revenue purposes, and in such a manner that while truly designating the contents of the cask, or giving such other indication as may be demanded, they cannot be fraudulently removed.

Fig. 1 represents a printed paper revenue-stamp, the circular portion at the right hand being the stamp proper, which is applied to the cask or box, and the portion at the left hand being the "stub," or that portion retained by the government official. Fig. 2 represents a separate strip, which is shown in Fig. 1 as attached at its left end to the stub of the paper stamp proper, in such manner that its coupons may be readily cut off and permanently affixed to the stamp proper when the latter is secured to the cask. Fig. 3 represents a metallic piece or strip, shown as detached, and before being applied to the stamp.

The main body of the sheet of paper being printed substantially as shown, so as to designate by a letter of the alphabet, or otherwise, the appropriate series, and with blanks for the particular number of each series, and also with a number indicating numbers of gallons, &c., in tens, has also a series of numbers, from one to nine, inclusive, 27 any one of which may be punched out by the proper official, in accordance with the actual number of gallons contained in the vessel. Thus, if 126 be the proper number of gallons, and 120 be the whole number printed upon the particular stamp, the officer, in order to indicate 126, would punch through the digital number 6, both upon the circular stamp and upon its "stub" or countercheck.

The piece shown in Fig. 3 I prefer to make of thin metal, because more readily embossed or impressed with permanent or ineffaceable characters, and because less destructible in handling and transmission, after it shall have been torn away from the stamp. This piece (also shown in part in Fig. 1) may be conveniently made of oblong, or any appropriate form, its conditions being merely, so far as concerns its shape, that it be of sufficient size to extend beyond the opening made in the paper for the exposure of the letters and figures made on it, and be capable of being retained in its place between the paper and *and* another backing piece of paper, the two pieces of paper being gummed together for this purpose. This backing-piece I prepare with dried gum on its outer face, that the stamp may be always ready by merely moistening the gum for instant application to the cask.

The strip shown in Fig. 2 I secure in part to the left side of the paper, by gumming its remaining portion, upon which are coupons for the units, being dry-gummed on its under side, so that when the proper number of gallons has been determined, the officer, upon cutting off the coupon at the figure designating the unit or digital number required, may, by moistening it, instantly, and without cutting or injuring the stamp, apply it to the stamp, while the stub or remaining portion of the slip will correspondingly indicate thereon just what has been so detached and applied to the stamp. Thus, to indicate 126 gallons, 120 being the whole number of the stamp, the coupon slip is cut off between the numbers 6 and 7, and the piece so cut off is moistened on the back and permanently attached to the face of the stamp, the 6 being the significant figure of the coupon.

The mode of applying a stamp so made to a cask may be, by way of greater protection against liability to damage or accident, as shown

and described in my patent No. 58847—that is, by boring a shallow depression in the wood of the cask or case, and after affixing the stamp by its gum to the bottom of this depression, then placing over it a ring having down-turned edges, and, by pressing the same, forcing its outer edge into the wood. Or the wood may have an annular
28 groove cut therein to receive the edge of the ring when so forced home.

Instead of making the removable piece out of metal, or of making it in a piece separate from the stamp, it may be made of the same piece of paper of which the stamp is composed by simply having its outline perforated after the manner of postage stamps, but ungummed at its back, so as readily to be torn away and detached from the stamp.

Although I have shown and described a lining-paper, between which and the stamp or surface-paper the metal slip is held, yet I may dispense with such lining and employ a thicker paper for the stamp, the metal strip in such case, if preferred, being confined or held to it by having its ends pass through slits made in the paper for such purpose. Or the metal piece may have points or projections at its ends or corners, or elsewhere, which may be forced or passed through the paper and clinched on the under side.

For the purpose of readily separating the circular stamp from the sheet, I perforate it about its periphery with any suitable slits, cuts, or openings adapted to the thickness or texture of the paper. I also prefer to have the stamps prepared with blanks and dotted lines, on which the collector, gauger, and storekeeper may place their signatures, as shown in Fig. 1.

It is to be understood that the metallic or other slip, the stub or check part of the stamp paper, and also the stub of the coupon piece, are all to be consecutively numbered alike for each alphabetical series, the capital letter A in the drawings indicating the alphabetical series, and the number immediately to the right thereof indicating a number in the consecutive numbers of such series.

For convenience I prefer to have the stamps, after being printed, bound up in book form, after the manner of merchants' or bankers' check-books, so that each stamp, as cut out, shall leave in the book its corresponding marginal piece or stub, having thereon a record of letters, figures, marks, &c., according with those upon such stamps.

I claim—

1. A stamp, the body of which is made of paper or other suitable material, and having a removable slip of metal or other material, displaying thereon a serial number or other specific identifying mark corresponding with a similar mark upon the stub, and so attached that the removal of such slip must mutilate or destroy the stamp.

2. In a paper revenue-stamp for indicating the contents of a
29 cask, and having thereon a number designating the number of gallons or other measure, providing the stamp, and also its stub or check-piece, with corresponding digital numbers, to be punched out to indicate the units, substantially as described.

3. In combination with a paper-stamp having a check-piece or stub, from which it is detached when applied for use, a coupon slip, whose coupons are to be secured to the face of the stamp, as and for the purpose described.

EDWARD A. LOCKE.

Witnesses:
J. M. DAVIDSON.
FRANK HAMILTON.

Complainants' Exhibit—Assignment.

Whereas the United States of America did, on the 3d day of August, 1869, grant letters patent to Edward A. Locke, of Boston, Massachusetts, for improvement in revenue marks or labels, No. 93391; and whereas the Benedict and Burnham Manufacturing Company—a company incorporated under the joint-stock laws of the State of Connecticut, and doing business in Waterbury, Connecticut—are desirous of acquiring the entire interest therein: Now, this indenture witnesseth, that for and in consideration of the sum of one dollar to me in hand paid, the receipt of which is hereby acknowledged, I, the said Edward A. Locke, have assigned, sold, and set over, and do hereby assign, sell, and set over unto the said Benedict and Burnham Manufacturing Company all the right, title, and interest which I have in and to the said invention as secured to me by the said letters patent, or as may be secured to me by any reissue of the said letters patent, which may be legally obtained for any remainder or residue of the term for which the said letters patent were originally granted; the same to be held and enjoyed by the said Benedict and Burnham Manufacturing Company and their legal representatives, for their own use and behoof, to the full end of the said term, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

30 In testimony whereof I have hereunto set my hand and seal this tenth day of November, in the year of our Lord one thousand eight hundred and seventy-five.

EDWARD A. LOCKE. [L. S.]

Witnesses:
S. W. KELLOGG.
JOHN E. EARLE.

Received for record March 14th, 1876, and recorded in Libre G 20, page 200, of transfers of patents.

In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed.

[SEAL.]

ELLIS SPEAR,
Acting Commissioner.

Evidence for complainants.

Testimony taken on the part of the complainant, under and pursuant to the sixty-seventh rule of the Supreme Court of the United States, as amended before John B. Mills, notary public, pursuant to notice and by consent of parties.

NEW HAVEN, *March* 26.

Present, John S. Beach and S. W. Kellogg, esq., counsel for complainant; and C. G. Child, esq., counsel for defendant.

The complainant's counsel offers in evidence certified copy of letters patent of the United States granted Edward A. Locke, dated August 3d, 1869, No. 93391, for improvement in revenue stamps for barrels.

Also assignments of said letters patent by Edward A. Locke, to the Benedict & Burnham Manufacturing Co., the complainants, bearing date the 10th day of November, 1875, recorded in Libre G. 20, page 200, of transfers of patents.

Said certified copy of letters patent being marked "Complainant's Exhibit, Letters Patents," and said assignment being marked "Complainant's Exhibit, Assignment."

31 Also photographic copies of revenue stamps, marked "Complainant's Exhibit, Hollister Revenue Stamp," and in connection therewith the complainant's counsel offers in evidence the following stipulation.

It is admitted that the signature to the exhibit "Complainant's Exhibit, Assignment," is in the handwriting of said Edward A. Locke.

United States circuit court, district of Connecticut.

THE BENEDICT & BURNHAM M'F'G CO.
vs.
DAVID F. HOLLISTER.

In the above entitled cause it is stipulated and agreed that any and all acts complained of in said bill of complaint by the petitioner, which were done by the respondent, were done and performed by him in the discharge of his duties as collector of internal revenue for the United States, for a designated collection district of the State of Connecticut, and by direction of the Commissioner of Internal Revenue, Department of the Treasury of the United States, and that the revenue stamps now offered in evidence by the plaintiffs, and marked Plaintiffs' Exhibit, "Hollister Revenue Stamps," are photographic copies of revenue stamps which were, after the date of the letters patent mentioned in said bill and prior to the bringing of this suit, furnished to the said defendant by the Bureau of Internal Revenue of which the said Commissioner is the official head, and used and sold by the said defendant in the discharge of his duties as collector, and that the same were so used and sold solely as a means of collecting the taxes due to the United States, which said taxes have been imposed by the laws of the United States, and the manner of said collection, as followed by said defendant, was regulated and authorized by such laws, and that the said defendant, in the use and sale of said exhibit stamps, acted as such collector of taxes by virtue of legal appointment thereto by the President of the United States, duly confirmed by the Senate of the United States.

JNO. S. BEACH,
For Complainants.
CALVIN G. CHILD,
For Respondent.

32 JOHN E. EARLE, a witness produced by and on behalf of the complainants, having been duly cautioned and sworn, to interrogatories proposed by JOHN S. BEACH, esq., of counsel for complainants, answered as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. John E. Earle; age, 48; residence, New Haven, Conn.; occupation, solicitor of patents, and am largely occupied as expert in patent causes in the United States courts.

Int. 2. Have you examined the letters patent issued to Edward A. Locke, of Boston, for improvement in revenue stamps for barrels, bearing date August 3d, 1869, No. 93391, of which a certified copy has been put in evidence in this cause, and do you understand the device therein described?

Ans. I have examined the patent and believe I understand the invention described and claimed therein.

Int. 3. Please compare the photographic copies of revenue stamps put in evidence, marked "Hollister Revenue Stamps," with the stamps described and claimed in said letters patent, and state the resemblances and differences between the two, giving your reasons for any opinion you may express.

Ans. The stamp referred to, marked Complainants' Exhibit, "Hollister Revenue Stamp," is composed of a single thickness of paper, on the face of which the number and registering marks are conveniently placed. On the back of this stamp is a piece of paper somewhat wider than the surface on which the number and registering marks are printed. The two edges of this back piece are caused to adhere to the back of the stamp, one above and the other below that portion of the surface which indicates the number, contents, etc. The back of the stamp, between the two edges of this strip or back piece, is free and loose. The object of this is that when the back of the stamp is coated with adhesive material and attached to the barrel, that portion of the surface of the stamp which is covered by the strip or back piece will not adhere to the barrel, hence after the stamp is secured to the barrel that portion of the stamp on which are the registering marks may be removed, and preserve the marks and figures thereon, the removal of that part defacing the stamp as well as preserving the record, and this can be done because that portion of the stamp which is removed is prevented from adhering to the barrel. To remove this portion it is only necessary to separate that portion from the body at its two edges.

33 Referring now to the Locke patent, I find the specification to say "This invention is designed more especially for use in sealing liquor casks with identifying marks or labels for revenue purposes, and in such a manner that while truly designating the contents of the cask, or giving such other identification as may be demanded, they cannot be fraudulently removed."

In describing the invention with reference to the illustration, the stamp face is made with an opening, and back of this a slip is arranged somewhat larger than the opening, and with the registering number thereon, and on the back of this slip a piece of paper is placed and attached to the body of the stamp, thereby securely holding the slip to the stamp, and so that after the stamp is attached to the barrel this registering slip or piece may be removed, and in removing the piece the stamp must be permanently defaced.

The inventor says, referring to this registering piece, "The piece * * * I prefer to make of thin metal, because more readily embossed or impressed with permanent and indefaceable characters and because less destructible in handling and transmission after it shall have been torn away from the stamp." But I do not understand it to be essential to this patent that the registering piece should be of metal or a separate piece from the face of the stamp, because the inventor also says: "Instead of making the removable piece out of metal or of making it in a piece separate from the stamp, it may be made of the same piece of paper of which the stamp is composed, by simply having its outline perforated after the manner of postage stamps, but ungummed at its back, so as readily to be torn away and detached from the stamp."

It is therefore only essential to this patent, as I understand it, that this registering piece or part of the stamp be removable, so as to pre-

serve the part removed, at the same time destroying the face of the stamp.

The method of separating the piece from the stamp is immaterial to the invention. The inventor mentions one well known device, which is to perforate around the part in like manner as for postage stamps; but this is only one well known device, and no better known than that of cutting, which was the method employed in postage stamps before the perforating was adopted.

In summing up, the inventor recites what he claims as his invention, as follows:

1. "A stamp, the body of which is made of paper or other
34 suitable material, and having a removable slip of metal, or other material, displaying thereon a serial number or other specific *in*dentifying mark corresponding with a similar mark upon the stub, and so attached that the removal of such slip must mutilate or destroy the stamp."

I understand the removable slip must be understood to be a part of the stamp, which can be conveniently detached, so as to preserve its surface, and at the same time deface the stamp from which it was removed.

In the stamp, complainants' exhibit, "Hollister Revenue Stamp," there is a portion of it which is made removable, and so as to preserve the marks upon the face of that piece, and yet deface the stamp identical with one of the modifications described in the Locke patent and which is embodied in the first claim. Hence I find in the stamp, complainants' exhibit, "Hollister Revenue Stamp," the first element in the first claim, and this removable slip displays on its surface the same identifying marks as provided in the Locke patent, and mentioned as the second element in the first claim, and these marks correspond with a similar mark on the stub from which the stamp is detached; the third element, and the removable slip is so attached that the removal of it must mutilate or destroy the stamp.

I have mentioned the claims as of three elements, by which I wish to be understood that there is required, first, stamp and removable slip; second, a serial number or other identifying mark on that slip; and third, a number corresponding thereto on the stub. For the reasons given, then, I find the stamp, complainants' exhibit, "Hollister Revenue Stamp" to embody the invention recited in the first claim of the said Locke patent.

Cross-examination by CALVIN G. CHILD, esq., counsel for defendant:

Cross-int. 4. Has your attention as an expert been called to the infringement of a stamp in use by the government before?

Ans. Yes, sir.

Cross-int. 5. In answering the question as to the similarity of *of* the stamp referred to as "Hollister Revenue Stamp," do I understand you to limit the points of similarity to any particular element in either of Locke's claims?

Ans. Not to single elements, but the first claim as a whole, only.

Cross-int. 6. One of those elements and points of resemblance, if I understand you correctly, is displaying upon the surface of the stamp the same identifying mark as provided in the Locke patent.
35 What do you mean by the same identifying mark? Do you mean anything further than the figures arbitrarily placed there?

Ans. I mean any mark which will be an identifying mark. The patent shows a letter and number; but as I understand it, any other iden-

tifying mark that might be chosen would be substantially the same thing; but in the stamp referred to the principal identifying mark is a letter and a number; but I am not to be understood as saying that the Locke patent makes any claim to such identifying mark as a mark.

Cross-int. 7. In the Locke patent the identifying marks are placed upon the removable slips, are they not?

Ans. If, by removable slip, you mean a piece made independent of the stamp, as shown in figure 3, the patent is not limited to that slip; but if by slip you mean the removable piece or part of the stamp as described in the patent, that mark is so placed.

Cross-int. 8. The identifying marks, to be useful for purposes of preservation, to which you have referred in your testimony, must necessarily be placed on the slip, detachable from the stamp, must they not?

Ans. They must be placed on the part of the stamp which is detachable from the body.

Cross-int. 9. If I understand you correctly, another element of resemblance is that marks upon the detachable portion of the stamp correspond with marks upon a stub, from which the stamp is removed. Do I understand you correctly?

Ans. You do.

Cross-int. 10. The remaining point of resemblance, if I understand you, is a stamp so attached to the barrel or package by being firmly fastened at either end and loose in the center, so that when the unattached portion is removed, the stamp is destroyed and the unattached portion capable of being retained or preserved. Do I understand you correctly?

Ans. You do not. The stamp must have on its back a cover for the piece or part which is to be removed, which, in the patent, is described as being gummed to the body of the stamp, so that when the back of the stamp is gummed over its whole surface and attached to the barrel, it does not attach the removable part to the barrel except through the piece on the back or its connection with the body of the stamp.

Cross-int. 11. The mode of attaching the piece of paper to the
36 back of the Locke stamp and to the stamp referred to as "Hollister Revenue Stamp" is essentially different, is it not?

Ans. No, sir. I understand them to be identical for this reason, that the specification says that the removable piece may be made of the same piece of paper of which the stamp is composed. In that case the same backing being on the stamp as described for holding the metal piece, would make the stamp substantially identical with the "Holister Revenue Stamp" in its mode of attachment.

Cross-int. 12. Is the Locke stamp anything more than a stamp loosely attached to the package on which it is placed in such a manner that a portion of the stamp can be removed unmutilated, and the remainder of the stamp be destroyed in the process of removal of such portion?

Ans. As I understand the Locke patent, the stamp is not loosely attached to the barrel, but is made to adhere to the barrel over the entire back surface of the stamp, and the qualification of the patent in this respect is that there shall be two thicknesses of material at the part of the stamp which is to be removed, and so that the under thickness will prevent the possibility of that removable part adhering to the barrel.

Cross-int. 13. The piece of paper on the back you regard then as an essential part of the invention, do you?

Ans. It is essential that there shall be two thicknesses of material at

the removable part of the stamp, and that those two parts shall not adhere one to the other, so as to interfere with separation or removal of the one part.

Cross-int. 14. You have already said that it is not essential to the Locke patent that the registering-piece or part of the stamp be removable, so as to preserve the part removed, and at the same time destroying the face of the stamp; and that the removable piece may be made of the same piece of paper of which the stamp is composed, by simply having its outline perforated after the manner of postage-stamps, but ungummed at its back, so as readily to be torn away and detached from the stamp. Does the piece of paper, to which you have referred, placed upon the back of the stamp in any way facilitate the invention as hitherto described you, except by separating the ungummed portion of the stamp from the package?

Ans. That part of my answer which you have quoted refers only to the material of which the removable part of the stamp is composed, and it is not to be understood as meaning that that is the only essen-
37 tial of the patent. The back piece, I think, does or would serve as an aid for separating the removable piece, because when the stamp is secured to the barrel the removable piece may be torn from the body of the stamp and the edge of that piece would be defined by the lines of connection between the back piece and the stamp.

Cross-int. 15. Confining yourself to the claim as expressed, this back piece, to which you refer, if therein specified, is included in what expression?

Ans. I understand the expression of "a stamp * * * * having a removable slip * * * * so attached that the removal of such slip must mutilate or destroy the stamp" to include the back piece by means of which the piece is made removable.

Cross-int. 16. If contained in the claim, it is contained then in the expression to which you have just referred?

Ans. I think it is there contained.

Cross-int. 17. And in no other expression?

Ans. That is all.

JOHN E. EARLE.

Subscribed and sworn to before me this 26th day of March, 1879.

J. B. MILLS,
Notary Public.

Evidence for defendant in reply.

Taken under the sixty-seventh rule of the Supreme Court of the United States, in equity, as amended, before John B. Mills, examiner, by agreement of the parties.

Present, John S. Beach, esq., of counsel for complainants, and Calvin G. Child, esq., counsel for defendants.

NEW HAVEN, *Friday, June* 20, 1879.

Defendant's counsel lays in evidence certified copy of English letters patent granted to G. T. Bonsfield, dated February 4th, 1863, for improvements in postage, revenue, and other stamps, and it is marked Defendant's Exhibit C.

38 Defendant's counsel lays in evidence the files, etc., in the application of George J. Wardwell, filed November 13th, 1854. Mode of preventing counterfeiting; and it is marked Defendant's Exhibit D.

(Objected to as a rejected application.)

Defendant's counsel lays in evidence certified copy of letters patent to Adolphus S. Solomans, December 21st, 1869, antedated June 21st, 1869, for cancelling postage and revenue stamps, and it is marked Defendant's Exhibit E.

Also, certified copy of letters patent granted to Robert James Kellett, dated May 28th, 1867, for improvement in punches for car tickets, and it is marked Defendant's Exhibit F.

Also, certified copy of letters patent granted to Robert James Kellett, dated June 23d, 1868, for improvement in ticket-punches, and it is marked Defendant's Exhibit G.

Also, certified copy of letters patent granted to Emanuel Harmon, dated March 22d, 1864, for mode of cancelling revenue and other stamps, and it is marked Defendant's Exhibit H.

Also, certified copy of letters patent granted to Albon Man, dated September 3d, 1867, for improvement in bank checks, and it is marked Defendant's Exhibit I.

Also, certified copy of letters patent granted to Henry M. Stow, dated December 29th, 1868, for improvement in railroad tickets and punch for cutting tickets therefrom, and it is marked Defendant's Exhibit J.

Also, certified copy of letters patent granted to George W. Bowlesby, dated December 26th, 1865, for improvement in postage stamps, No. 51782, and a patent granted George W. Bowlesby, July 14th, 1868, No. 79806, and they are marked, respectively, Defendant's Exhibit K and Defendant's Exhibit L.

Also, certified copy of letters patent granted to R. de Roode, December 3d, 1867, for improvement in conductor's ticket books, and it is marked Defendant's Exhibit M.

Also, certified copy of letters patent granted to Charles W. Harris, November 15th, 1864, for mode of cancelling postage and revenue stamps, and it is marked Defendant's Exhibit N.

Also, certified copy of letters patent granted to Klaucke and Fraser, dated April 6th, 1869, for improvement in envelopes, and it is marked Defendant's Exhibit O.

Also, certified copy of letters patent granted to Cyrus W. Saladee, April 27, 1869, for improvement in envelopes, and it is marked Defendant's Exhibit P.

39 Also, a stamp for rectified spirits, which is marked Defendant's Exhibit Q.

Also, a wholesale liquor dealers' stamp, which is marked Defendants' Exhibit R.

Also, an envelope, which is marked Defendant's Exhibit S.

Also, certified copy of letters patent granted to Addison C. Fletcher, which is marked Defendant's Exhibit T.

Also, copies of letters patent granted to Edward Wilkins, May 13, 1851, which is marked Defendant's Exhibit U.

Also, a copy of English letters patent granted to Achille Victor Pinta, August 18, 1858, No. 1880, and it is marked Defendant's Exhibit V.

Also, extract from printed publications from the library of the United States Patent Office, being a copy of the provisional specification filed August 18th, 1858, No. 1884, in the matter of the application of T. O. Duke for English letters patent, and it is marked Defendant's Exhibit W.

Also, extract from the bound volumes of the library of the United States Patent Office, being a copy of the provisional specification filed

July 19, 1858, No. 1627, in the matter of the application of T. F. Chorley.

ELVERTON R. CHAPMAN, a witness produced by and on behalf of the defendant, having been duly cautioned and sworn to interrogatories proposed by C. G. CHILD, Esq., of counsel for the defendant, answered as follows:

Int. 1. What is your name, age, occupation, and residence?

Ans. My name, Elverton R. Chapman; age, thirty-three years; chief of the stamp division, Internal Revenue office; residence, temporarily, Washington, D. C.; I was appointed a clerk in the office of the Internal Revenue in 1869, and assigned to the stamp division; have been at the head of the division since about 1872, I think.

Int. 2. Are you familiar with the construction of the stamps and different sorts of stamps which have been in use for the purpose of collecting internal revenue, from 1869 to, say, October, 1877?

Ans. I am.

Int. 3. You may describe the general construction of all such stamps as have been used in collecting revenue on distilled spirits during that time, without making reference to the engraved designs.

40 Ans. After spirits have been produced they are drawn from the cistern into the barrels, and there is attached to each barrel a stamp, called a warehouse stamp, together with certain marks and brands put on simultaneously with the stamp; this stamp is an oblong piece of paper, properly engraved, with blanks, in which are inserted the numbers of the package, the number of wine and proof gallons contained therein, name of the distiller, location of the distillery, and are signed by the storekeeper and gauger on duty at the distillery; this stamp is merely used as a check, and does not represent a tax; the charge made therefor is ten (10) cents; the stamp consists of but one piece of paper, about three by two inches, and is attached by paste or other adhesive material, and by tacks at the corner and center, by the gauger on duty at the distillery; I think it is applied generally after the package is removed to the warehouse; this stamp (warehouse) has been in use from 1868 to the present time, and no change has been made in the construction of the same, the only changes being in the quality and kind of paper used and the designs of the engraving.

The package is then removed to the bonded warehouse of the distillery, where it remains until the distillery files with the collector of the district a paper, called an entry for withdrawal; this paper is accompanied by the amount of the tax upon the spirits contained in the package; the collector thereupon fills out, signs, and forwards to the gauger the tax-paid stamp, which is a piece of paper nearly square, upon the face of which is engraved the body of the stamp, together with nine coupons, of which stamp and coupons, with the stub which remains in the books from which the stamp is cut, Complainant's Exhibit Hollister Revenue Stamp is a photographic copy.

From 1868 until about 1871 this stamp, which has always been called the tax-paid stamp, was constructed of two pieces of paper; before the stamp was printed, the paper of which the body of the stamp was composed was perforated with a round aperture, about one and a half inches in diameter; to the back of the paper was then attached, by paste or mucilage, a piece of tissue paper, completely covering said aperture; the stamp was then printed, the engraving covering both the body of the paper and so much of the tissue paper as appears through the aperture. From about 1871 to 1875 the stamp was composed of but

one piece of paper, the use of the tissue paper and the aperture having been abandoned. In August, 1871, there was added to the tax-paid stamp a piece of paper, which was pasted by its edges upon the
41 back thereof, as shown in Complainant's Exhibit Hollister Revenue Stamp. Stamps of the latter character have been in use from August, 1875, to this date.

On receipt of tax-paid stamps by the gauger, he proceeds to affix them to the head of the barrel, together with certain marks and brands; he, together with the storekeeper, having first signed the same at the places indicated in Complainant's Exhibit Hollister Revenue Stamp. The gauger puts this stamp on the barrel by means of some adhesive material and tacks; he then cancels it by the use of a stencil-plate, imprinting across the face of the stamp and extending over each side upon the head of the barrel waved lines; he also imprints upon the head with a stencil-plate his name and official designation. The whole surface of the stamp is then varnished with a transparent varnish; no varnish can be used which is oily enough to affect the paste.

The package is then removed from the warehouse and passes into the custody of the distiller or owner. If the owner desires to purify the contents of the package it is then taken to the establishment of a duly authorized rectifier of distilled spirits. The rectifier then notifies the collector of the district that he desires to dump, for rectification, the contents of certain specified packages, whereupon the collector directs a gauger to proceed to the rectifying establishment and gauge the specified packages. When the packages are gauged the gauger is required by regulations to cut from the tax paid stamp a designated portion thereof, and transmit the same to the collector, with a report of his operations. The packages are then dumped into the tubs of the rectifier, and the identity of their contents lost. When the process of rectification is completed the spirits are drawn off in barrels and the gauger affixes to the heads thereof an engraved stamp, called a stamp for rectified spirits, of which stamp, together with its coupons and stubs, Defendant's Exhibit Q is a photographic copy; a charge of but ten (10) cents is made for this stamp, it being used simply to protect the goods from detention or seizure, and to indicate that the spirits have been regularly withdrawn from a rectifying establishment.

This stamp was composed of but one piece of paper from 1868 down to January, 1876, since which time such stamps have been constructed with a paper back, as shown in Defendant's Exhibit Q. These stamps for rectified spirits are affixed and cancelled with waved lines by the gauger, in the same manner as tax-paid stamps heretofore described by me; the package is then marketable as rectified spirits.

42 The portion of the tax-paid stamp detached or cut and forwarded by the gauger, as heretofore described, includes the serial number of the stamp, the date on which the tax was paid, and the number of proof gallons; the number of the cask, the location of the warehouse, and the person or firm to whom delivered, and the signature of the collector; the part so cut out is over the paper back; if the package of rectified spirits then goes into the establishment of a rectifier for re-rectification a portion of the stamp is cut out and forwarded in the same manner as a portion of the tax-paid stamp, as heretofore described by me; if the package of rectified spirits goes into the establishment of a wholesale liquor dealer, who empties the same or there is a constructive change of the package, the wholesale liquor dealer must cut from the stamp for rectified spirits a designated portion thereof, and forward it to the collector with his application for wholesale liquor dealer's

stamps, with which to cover the package or packages containing spirits taken from the package of rectified spirits; the portion of the stamp for rectified spirits, so cut out, includes the serial number of the stamp, the name of the collector, with his district, the name of the rectifier, with his district, the date, proof gallons, wine gallons, and name of gauger.

If a wholesale liquor dealer receives in his establishment a package bearing a stamp for rectified spirits, a wholesale liquor dealer's stamp, or a tax-paid or warehouse stamp, and he desires to place the contents thereof in other packages, or desires to have a constructive change of package, he must detach the designated portion of the rectifier's, wholesale liquor dealer's, or tax-paid stamps, as the case may be, and forward such portions to the collector with his application for wholesale liquor dealer's stamps to cover such package.

From 1868 until 1876, wholesale liquor dealer's stamps were constructed of but one piece of paper, and without coupons; from 1876 to this date, such stamps have been constructed with a paper back, as shown in Defendant's Exhibit R, which is a photographic copy of the wholesale liquor dealer's stamps now in use; the portion of wholesale liquor dealer's stamps, which is cut out and forwarded to the collector, includes the serial number of the stamps, the date of its issue, the name of the wholesale liquor dealer, the wine gallons of original package, the serial number of the package, if any; the serial number of the stamp upon original package, the kind of stamp, original proof, present proof, and name of collector issuing same.

43 Stamps for rectified spirits have been issued in denominations, with coupons attached, only from 1876 to this date; prior to that time such stamps were issued without the denomination being engraved upon its face, and without coupons; the gauger being required to fill in, with pen and ink, the number of gallons contained in the package; by denomination I mean that the stamps were issued for a decimal number of gallons, 10, 20, 30 gallons, such decimal number being engraved on the face of the stamp, and the coupons are so arranged as to cover any number of gallons between the decimal numbers; wholesale liquor dealer's stamps since 1876 have been prepared in the same manner as stamps for rectified spirits, last above described; but prior to 1876 such stamps were prepared without coupons and without the denomination engraved on its face; tax-paid stamps from 1868 to this date have been prepared with coupons and with the denomination engraved on the face; wholesale liquor dealer's stamps are cancelled with waved lines, as the other stamps, and a charge of ten (10) cents is made for each of them; I mean by the phrase "constructive change of package," the destruction of the stamps and the erasure of the marks and brands upon the package in the establishment of a wholesale liquor dealer, and the affixing of a wholesale liquor dealer's stamp with proper marks and brands the same as if the liquor had been placed in a new package.

Int. 4. Have you examined the Locke patent for revenue stamp which is in controversy in this proceeding?

Ans. I have.

Int. 5. In what way, if any, does it resemble the stamps hitherto referred to by you, and the stamp Complainants' Exhibit Hollister Revenue Stamp?

Ans. It appears to resemble it in that it has a stub and a serial number to be placed upon both stamp and stub, and there appear to be blanks for the signatures of the collector, storekeeper, and gauger. I see no other points of resemblance.

Int. 6. Taking the first claim of the patent into consideration, is the stamp used by the government referred to in your previous testimony described in or indicated by such claim; and, if so, in what respect?

Ans. I think not. The first claim provides for a stamp the body of which is made of paper or other suitable material, and having a removable slip of metal or other material, which slip is to be so attached that its removal must mutilate or destroy the stamp. The stamp used
44 by the government has not attached thereto a removable slip, the removal of which must mutilate or destroy the stamp. The portion of the claim relating to a serial number or other specfic identifying mark corresponding with the similar mark upon the stub may be considered as a substantial description of the use of serial numbers on the stamps used by the government.

Int. 7. Is there any substantial point of resemblance between the two stamps, either in their appearance or description, other than the employment of identifying marks upon the stamp and upon the stub to which it is attached as specified in the first claim?

Ans. I think not.

Int. 8. Is there any substantial point of resemblance in the construction of the two stamps above referred to other than in the use of identifying marks upon each?

Ans. As I understand it, I am comparing this drawing attached to each patent with the Complainants' Exhibit "Hollister Revenue Stamp." They resemble each other, so far as the blanks for the signature of officers is concerned, in addition to the identifying marks.

Cross-examination by JOHN S. BEACH, Esq.:

Cross-int. 9. You say you have been at the head of the stamp division of the internal revenue since about the year 1872, and are familiar with the construction and use of revenue stamps by that department from 1869 up to present time. Referring now to the Complainants' Exhibit "Hollister Revenue Stamp" and the Defendants' Exhibits Q and R, has the device embodied in those exhibits proved useful to the government in guarding against frauds upon the revenue?

Ans. It has; very great.

Cross-int. 10. You say that these stamps illustrated by these exhibits have been in use since 1876; can you give a general estimate of the annual saving of the revenue to the government which has resulted from their adoption, and, to simplify the question, would you estimate it by hundreds of dollars or thousands of dollars, or by hundreds of thousands of dollars, or by millions?

Ans. Without having any data at hand, and judging only from the large losses which it is supposed the government was subjected to prior to the adoption of this device, it is my judgment that the device, coupled with the checks instituted in connection therewith, has resulted in the saving of millions of dollars since 1876.

Cross-int. 11. Is not the utility of the checks to which you refer largely due to and dependant upon the device spoken of?

45 Ans. Many of them are.

Cross-int. 12. Calling your attention now to Complainants' Exhibit "Hollister Revenue Stamp" for another purpose, will you please state whether you find that it consists of a stamp attached to a stub and capable of being removed therefrom?

Ans. The expression attached to a stub might imply that at some period of manufacture the stamp was detached therefrom; the stamp and stub are printed simultaneously from the same plate upon one piece of paper, and the stamp can be separated from the stub.

Cross-int. 13. If, then, I should substitute the word "connected" for the word "attached," you would, I understand it, answer in the affirmative?

Ans. I would.

Cross-int. 14. Do you find in the construction of that device that after the stamp has been detached from the stub and affixed to a cask or package that a portion of the stamp can be removed, leaving the remaining portion attached or affixed to the cask or package?

Ans. I do.

Cross-int. 15. Is that removable portion of the stamp a part of the same piece of paper of which the stamp is composed?

Ans. It is.

Cross-int. 16. Do you find that there is upon that removable portion an identifying mark, or a mark placed thereon for the purpose of providing for identity?

Ans. I find the serial number of the stamp, which I suppose is what may be called an identifying mark.

Cross-int. 17. Do you find upon the stub from which the stamp has been detached a serial number, or what may be called an identifying mark, corresponding with that upon the stamp?

Ans. I do.

Cross-int. 18. Is there such a relation existing between the removable portion and the body of the stamp after it is affixed as that the act of removal will effectually cancel the stamp?

Ans. It will effectually destroy the stamp. "Cancel" has a technical meaning in our law, and implies an act to be performed by the person affixing a stamp at the time it is affixed and before the package to which it is attached is placed upon the market.

E. R. CHAPMAN.

46 T. J. W. ROBERTSON, a witness called by and on behalf of the defendant, having been duly cautioned and sworn, to interrogatories proposed by CALVIN G. CHILD, Esq., of counsel for the defendant, answered as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. T. J. W. Robertson; age, 46; residence, Washington, D. C.; occupation, patent agent.

Int. 2. Please give an outline of the various businesses, in which you have been connected during your life.

Ans. I have been engaged as a mechanic, as a printer, inventor, patent agent, and mechanical expert, in which last capacity I have been frequently called upon to testify as an expert in patent causes; I have been connected with the patent business, as an inventor, patentee, and patent agent, for over twenty-five years; for the last eleven years I have been engaged more especially in the examination of alleged new inventions, and in deciding whether such alleged inventions were patentable or not, during which time I have made many thousand such examinations; for over nine years I had charge of one branch of the Patent Office practice of Munn & Co., proprietors of the Scientific American, and am still in their employ as the Washington correspondent of their paper, and write occasionally for the Scientific News.

Int. 3. Look at Defendant's Exhibit M, de Roode's patent of 1867. Examine it and state whether you understand it.

Ans. I have examined it and I do understand it.

Int. 4. Explain fully what you understand Fig. 4 of the drawing of that patent to represent, and the function thereof.

Ans. I understand that it represents a railroad ticket provided with a flap, which is to be pasted against the rear side of the ticket, to enclose a piece of money, which is shown below the drawing of the ticket in Fig. 4, by which means the two parts, that is the body of the ticket and the flap, are secured together, leaving a part of the body or face of the ticket unattached to the back; the function of the ticket so represented and made, is that it is to be used as an evidence that a certain sum of money has been paid, and that the holder is entitled to a certain amount of transportation.

Int. 5. What do the other figures represent?

Ans. They represent a series of tickets bound in books, each ticket being attached to a stub.

47 Int. 6. Look at Defendant's Exhibit F, Kellett's patent of 1867. Examine it, and state whether you understand it.

Ans. I do.

Int. 7. State what the function of the instrument described there is, and its mode of operation.

Ans. It is a ticket punch, and it is intended to be used to punch railroad tickets, and to collect the punching therefrom as evidence of the number of tickets and the kind of tickets punched, as a check on the number of tickets sold, and as check on fraud.

Int. 8. Look at Defendant's Exhibit G, Kellett's patent of 1868, and, if you understand it, state what the function of the instrument there described is, what its mode of operation is, and what sort of ticket, and how constructed, such instrument is to be used upon.

Ans. The function of the instrument is to shear off portions of railroad tickets and collect the portions cut off in a locked box to prevent fraud.

The ticket is an *o*blong, having coupons at one end, each of which is cut off, one at a time, by the shearing device and dropped into the box below.

Int. 9. Answer same questions as regards Defendant's Exhibit J, Stow patent of 1868.

Ans. This patent shows a punch and two railroad tickets, and the punch adopted to cut the tickets; coupons are printed on one end of said tickets. One of these tickets, represented by Fig. 1, consists of a pouch or bag, and the coupon on the end of the ticket, which is designed to be removed by the punch, is connected on all four of its sides to the face of the ticket. This ticket being formed of two thicknesses of material can be readily applied by pasting or otherwise, and any portion of it, as for instance the coupon, could be readily removed by cutting or otherwise.

Int. 10. Have you heard the testimony of Mr. Chapman, and do you understand the method of constructing tax-paid stamp—stamp for rectified spirits and wholesale liquor dealer's stamps as described by him, and the mode of issuing and using the same?

Ans. I have a general knowledge of the use of such stamps, and I fully understand the manufacturing of and the issuing of the stamps shown in Complainants' Exhibit "Hollister Revenue Stamp" and Defendant's Exhibits Q and R. I have heard Mr. Chapman's testimony.

48 Int. 11. Have you examined Bowlesby's 1865 patent, Defendant's Exhibit K, and do you understand it?

Ans. I have and I do.

Int. 12. Are there points of resemblance between the Bowlesby patent just referred to and the Locke patent, and, if so, in what does the resemblance consist?

Ans. The Bowlesby patent shows a stamp having a portion ungummed so that it will not adhere to the object to which it is attached; the part to be torn off being defined by perforations. I find in the Locke patent a stamp having a piece intended to be removed, which is also defined by perforations, as described in one portion of the patent. In both cases the stamp is cancelled by tearing away the removable piece.

Int. 13. Suppose a government stamp affixed to a package of spirits, could the part over the red strip be readily removed by tearing?

Ans. The portion required to be preserved could be readily removed by cutting, in the manner prescribed by the regulations, but the whole piece over the red paper could not readily be removed when the stamp is affixed as the government requires, owing to the tacks at each end of the red strip; if the question refers to the removal of the part which the government requires to be returned, it may be removed by tearing, but not in so neat a manner as by cutting, which is what the government requires.

Int. 14. Could it be readily or conveniently, or rapidly, removed by tearing?

Ans. It could.

Int. 15. Explain how.

Ans. By placing the finger, or the nail of the finger, under the edge it can be readily torn.

Int. 16. Can it be readily torn so as to preserve the part required to be preserved?

Ans. It could with ordinary care.

Int. 17. How?

Ans. By inserting the finger-nail so as to raise the portion of the stamp to be torn, and holding fast with thumb and finger and pulling on the strip to be removed until separated, or a "straight edge" might be placed along the line where separation was desired, and by pulling on the portion to be removed it could be torn from the body of the stamp in comparatively straight lines.

49 Int. 18. Look at the Defendant's Exhibit S, the envelope having the postage-stamp with the embossed engraving, and state what changes must be made in it to adapt it to use as a tax-paid or wholesale liquor dealer's or rectifier's stamp, like Exhibits "Q" and "R."

Ans. It would be necessary to have the requisite words and figures engraved on it, when it could be used for either of the stamps mentioned.

Int. 19. Would such a change be substantial or merely formal?

Ans. It would be merely formal.

Int. 20. Your reasons.

Ans. It is now a stamp which could be used, if the government chose, to apply it to the purpose for which the stamps referred to are used; the letters and figures could be written in if necessary, the mere printing is a matter of convenience to save time; it can be pasted and tacked on in the same way, leaving the face of the stamp exposed, so that it could be "canceled" and destroyed in the same manner as government stamps now are; a piece from the body of the stamp could be removed in the same manner, leaving the back attached to the package, so that the space from which the piece removed was taken would be covered by paper; in one respect such a stamp would be more convenient than the present stamp used by the government for spirit packages, as the remaining part of the stamp which the gov-

ernment requires to be destroyed could be more readily removed from the package.

Int. 21. Was this as true at the time the Locke patent was issued as it is now?

Ans. It was.

Int. 22. Look at Defendant's Exhibit C, Bonsfield's English letters patent of 1863, and if you understand it state what points of resemblance there are between that patent and the Locke patent.

Ans. I have examined the patent referred to and I find that among other things it shows a stamp having a portion ungummed so that it may be torn off for the purpose of cancelling the stamp; the portion to be torn away being defined by perforations. On examining the Locke patent I find that that describes a stamp having a portion ungummed that it may be readily torn away and the portion to be torn away is defined by perforations. The object of tearing away portions of the stamp is the same in both cases, to cancel the stamp. The Bonsfield stamp is also described as being used for a tax stamp and in this respect resembles the Locke stamp also.

Int. 23. Have you examined the Bowlesby patent, Defendant's
50 Exhibit L, July 14, 1868, No. 79,806, for Improvement in Revenue Stamps, if so please state the points of resemblance between it and the Locke patent, if any?

Ans. I find that both of the patents are for the same purpose, that is, they are employed for tax stamps, to be used on spirit packages. One part of each is to be affixed to the barrel and one part of each is torn off and returned to the government, and the part returned to the government in both cases has the identifying number to prevent fraud. Each of them is provided with blanks to be filled in by the proper officers.

Int. 24. Look at Defendant's Exhibit I, Fletcher patent, and if you understand it state what points of resemblance, if any, there are between that patent and the Locke patent in suit?

Ans. I find them both to be for revenue stamps designed to be attached to any article on which duty is to be paid, each having a piece adapted to be removed for the purpose of cancellation, and the pieces in both patents that are torn off are intended to be preserved, and in each case the torn off portion forms a part of the face of the stamp and having letters or figures thereon.

Int. 25. Examine the Fletcher patent as stated in its claim in connection with its specification, and state whether or not there is any claimed invention for a backing or double piece of paper in the construction of the stamp?

Ans. There is.

Int. 26. Look at Defendant's Exhibit "E," Solomon's patents, and state what points of resemblance there are between it and the Locke patent, if any.

Ans. I find them both alike in being revenue stamps, being formed of two thicknesses of material, one of which is perforated, and a portion of the design in each intended to be printed or impressed on both of the pieces of which each stamp is composed.

Int. 27. Look at Defendant's Exhibit "H," Harmon's patent, and if you understand it state what points of resemblance there are, if any, between that patent and the Locke patent.

Ans. They are both adhesive revenue stamps, and both of them are adapted to be cancelled by the removal of a portion of the face.

Int. 28. Look at Defendant's Exhibit "I," the Mann patent of 1867,

and if you understand it state what points of resemblance there are between that patent and the Locke patent.

Ans. I find the instrument shown in both of the patents to be
51 printed papers having blanks to be filled out as occasion may require, each designed to receive an identifying number, and also designed to have certain figures removed by punching or otherwise, which removed figures will also serve as a means of identifying it when used in connection with the stub with which checks are usually furnished.

Int. 29. Look at Defendant's Exhibit "N," the Harris patent, and if you understand it, state what points of resemblance there are, if any, between that patent and the Locke patent.

Ans. Both of the patents describe revenue stamps, and provision is made in both of them for the removal of a portion of the face, and both of them describe means by which the piece to be torn away can be readily removed; the removed portion being prevented from adhering to the article to which the stamp is attached by the interposition of some other substance between the stamp and the article on which it is affixed.

Int. 30. Look at Defendant's Exhibit "O," Klaucke & Fraser's patent, and if you understand it, state what points of resemblance, if any, there are between that patent and the Locke patent.

Ans. They both show printed papers with spaces for writing on them; each of them describe or show a portion having letters or figures defined by perforations, which are intended to facilitate the removal of the portions defined by the perforations. In each case the removed portions are designed to be returned to the original issuer of them.

Int. 31. Look at Defendant's Exhibit "P," Saladee's patent, and if you understand it, state what points of resemblance there are between that patent and the Locke patent.

Ans. They both show printed papers with space for such writing as may be necessary in their use, and each of them describes a removable slip, which is secured to the body of the printed paper by passing it through slips cut in said body. They also resemble each other and in there being two thicknesses of material, and in the removable slips being designed to be returned to the original issuer.

Int. 32. Look at Defendant's Exhibit "D," file wrapper, and rejected application of George J. Wardwell, dated Nov. 13, 1854, and state what points of resemblance, if any, there are between the invention claimed by Wardwell and the invention claimed by Locke in his patent which is the subject of this suit.

52 (Complainant's counsel objects to the admission of Exhibit D, and of any evidence in relation thereto, for the reason that the same is a rejected application.)

Ans. They are both of them printed papers, each of them having a portion of the impression on a separate piece of material, which piece can be used by the party issuing the original document for the purpose of comparing the removed part with the other portion, to see if they correspond, as a means of preventing fraud.

Int. 33. Look at Defendant's Exhibit "U," English patent to Edward Wilkinson, and if you understand it, state what points of resemblance there are between the invention there claimed and the invention claimed by the Locke patent.

Ans. Both of them show printed papers consisting of a portion that is designed to be attached to the article on which it is to be used, a

stub by which each paper is bound into a book, and a removable piece which is to be detached from that portion of the ticket that is attached to the article on which it is used. Both the stub and the detachable or removable piece have identifying numbers to prevent fraud, and as a means of comparing one with the other.

Int. 34. Look at Defendant's Exhibit "V," Pinta letters patent, and if you understand it, state what points of resemblance there are between the invention claimed therein and that claimed by Locke's patent.

Ans. They both consist of printed papers, showing a main portion and a stub, both provided with blank spaces to be filled in by writing, and each is provided with a removable piece or pieces, intended to be removed, the removal of which changes the character of the document.

Int. 35. Look at Defendant's Exhibit "W," and if you understand it, state what points of resemblance there are between the invention there set forth and the invention claimed in the Locke patent.

Ans. They are both printed papers from which pieces are to be removed for the purpose of cancelling to prevent fraud.

Int. 36. Look at Defendant's Exhibit "X," and if you understand the same, state what points of resemblance there are between the invention therein set forth and the invention claimed by the Locke patent.

Ans. They resemble each other in both being printed papers, and both having additional or removable pieces which, when removed, change the character of the document.

53 Int. 37. Referring again to the Fletcher patent, please state whether or not in the invention claimed by Fletcher there is reference to the preservation of the detached portion of the stamp as evidence of the cancellation?

Ans. There is.

Int. 38. And is such capacity of preservation claimed as a part of his invention?

Ans. There is nothing in the claim as to the preservation, but in the statement of the invention I find these words: "By this application of my invention as applied to an adhesive stamp, whether for internal revenue or other purposes, said stamp may be cancelled by tearing off the flap or flaps, which, if necessary, may be preserved as evidence of the cancellation."

Int. 39. Please to explain the state of the rest, in reference to the stamps under consideration, to wit, "Hollister Revenue Stamp," Exhibits Q and R, at the date of the Locke patent.

Ans. At the time Locke's patent was issued, postage stamps, revenue stamps, and stamped envelopes had long been employed. These stamps are usually canceled by blotting or marking with ink, but other means have been proposed. The English patent of Bonsfield and the American patent of Bowlesby, of 1865, showed loose flaps, intended to be torn off, for canceling such stamps. The Bowlesby patent of 1868 shows a revenue stamp of which one portion was designed to be affixed to the spirit package, and the other portion torn off and returned to the revenue officer who originally issued it. Tickets have been made having a portion intended to be removed and returned to the office from which they were issued. As instances of such tickets, I cite the patents of Kellett, 1867 and 1868, and the patent of Stow, Exhibit J, a ticket having a backing pasted thereto, in such a manner as to leave unattached to the backing a piece of the front of the ticket, which

could be removed by cutting in the same manner as the pieces which are intended to be removed from the Exhibits Q and R, appears in the patent of De Roode, Exhibit M. The idea of canceling a stamp by removing a certain portion from the face of the stamp was also in use at this time or previous to this time, as is shown in the Harris patent, Exhibit N; and the Harmon patent shows a stamp from which a piece is removed to cancel it. Stamps or tickets of two thicknesses of paper, so made that if pasted to an article a part of the face could be readily removed, were quite common; as instances, I cite the patents of
54 Fletcher, De Roode, and Stow. In other cases it had been proposed to print stamps and other documents on two pieces of paper, superimposed one on the other, so that a portion of the design might be printed on each, as in the Solomon patent and in the Wardwell application. The idea of perforating a paper, that a portion connected to it on all sides might be readily detached from its face, as described in the Locke patent, is shown in the patent of Klaucke & Fraser, and a removable piece held in position by passing its ends through slits, as in one of the modifications described by Locke, is shown in Saladee's patent.

The use of an identifying number on a document, in order that it might be compared with a corresponding number on a stub from which the document was taken, was well known long before the date of Locke's patent, and was well known and in common use by bankers and others as long ago as I can remember, and I believe long before that. It is shown also in the patents of Wilkins & Mann, Exhibits U and I, and a revenue stamp, designed to be torn in two parts, on each of which an identifying number is shown, in Bowlesby's 1868 patent, Exhibit L.

Many different patents, issued previous to the Locke patent, show the idea of removing a portion from a document, in order to change its character or limit its powers, and as instances I cite the patents of Bowlesby of 1865, Harmon, Pinta, Kellett, De Roode, and Fletcher, Exhibits K, H, V, F, G, M, and T.

The use of a three part document, consisting of a printed paper, having a stub bearing a number, and in addition thereto another part bearing a number corresponding to that on the stub, which numbered piece is intended to be removed and returned to the possession of the original issuer as a precaution against fraud, as in the Locke patent, is shown in the patent of Wilkins, Exhibit U, dated about eighteen years previous to Locke's patent.

Int. 40. Taking the first claim of the Locke patent into consideration, and the stamps used by the government, referred to in your previous testimony, is there any substantial point of resemblance between the stamps referred to in the Locke patent, and Exhibits Q, R, "Hollister's Revenue Stamps," other than in the employment of identifying marks upon the stamp and upon the stub to which it is attached, as specified in the Locke patent?

Ans. In my opinion there is not.

55 Cross-examination by JOHN S. BEACH, Esq., of counsel for complainants:

Cross-int. 41. Excluding from your consideration Exhibits Q and R, will you please designate which, if any, of the other exhibits put in evidence by the defendant describes or shows a structure adapted by its construction (irrespective of its size) to be applied to a cask or package for revenue purposes, which structure has a stub from which

the body of a stamp can be detached, and when detached and affixed, consists of two parts, one part intended for permanent attachment, and the other part intended to be removed, the two parts having such relations to each other and to the stub that their separation destroys or cancels the affixed part of the stamp, while the removed part contains such symbols of identity between itself and the stub as that its preservation guards against fraud?

Please bear in mind that I do not desire you in answering this question to repeat any part of your direct testimony, as to partial and isolated, real or supposed resemblances between any of these exhibits and the Locke patent, but I ask you to designate, if you can, by reference to its ear-mark of alphabetic lettering, any exhibit, except Q and R, which embodies in itself each and all of the characteristics mentioned above.

Ans. I designate Exhibit V, Wilkins' English patent, as being capable of use in the manner as described in this question.

Cross-int. 42. Can you designate any other among the exhibits having these characteristics?

Ans. The check shown in the Man patent, Defendant's Exhibit I, could also be used in the manner intended by cross-interrogatory 41, provided the check being shown was printed, as checks usually are attached to a stub.

Cross-int. 43. Do you find any other exhibit having the characteristics stated in cross-interrogatory 41?

Ans. No, sir; I don't remember any.

T. J. W. ROBERTSON.

56 *Evidence for complainants in reply.*

Taken under the sixty-seventh rule of the Supreme Court of the United States, in equity, as amended, before John B. Mills, examiner, by agreement of the parties.

NEW HAVEN, *June 27th*, 1879.

Present: Counsel for both parties.

Deposition of John E. Earle (recalled).

Direct examination by JOHN S. BEACH, Esq., of counsel for complainants:

Int. 1. Have you previously been sworn and testified in this case?

Ans. I have.

Int. 2. Were you present at the taking of the testimony of T. J. W. Robertson, a witness produced by the defendant, and have you examined and do you understand the several exhibits mentioned and described by him?

Ans. I was present during a large part of his testimony, and I have examined and believe I understand the several exhibits referred to.

Int. To the end that the evidence in rebuttal may be made more simple and concise, I have endeavored to classify the exhibits mentioned by Mr. Robertson into four divisions or groups.

First: K. Patent to George W. Bowlsby, for "Improvement in Postage Stamps."

T. Patent to A. C. Fletcher, for "Improvement in Postage Stamps."

O. Patent to Klaucke & Fraser, for "Improvement in Envelopes."

P. Patent to C. W. Saladee, for "Improvement in Envelopes."

N. Patent to Charles W. Harris, for "Mode of Cancelling Postage Stamps."

S. Envelope, with postage stamp embossed thereon.

Second: G. Patent to R. J. Kellett, for "Improvement in Ticket Punches."

F. Patent to R. J. Kellett, for "Improvement in Punches for Car Tickets."

57 M. Patent to R. de Roode, for "Improvement in Conductor's Ticket Books."

J. Patent to Henry M. Stow, for "Improvement in Railroad Tickets, and Punch for Cutting Coupons therefrom."

U. Patent (English) to E. Wilkins, for "Improvement in Labels or Tickets."

Third: X. Patent (English) to J. F. Chorley, for "Improvement in Bank Checks."

I. Patent to Albon Man, for "Improvement in Bank Checks."

V. Patent (English) to A. R. Pinta, for "Improvement in Blank Forms or Checks."

W. Patent (English) to J. O. Duke, for "Improvement in preparing Checks."

D. Rejected application of George J. Wardwell, for "Mode of Preventing Counterfeiting."

Fourth: C. Patent to G. F. Bonsfield, for "Improvement in Postage, Revenue, and other Stamps."

L. Patent to George W. Bowlsby, for "Improvement in Revenue Stamps."

E. Patent to A. E. Solomons, for "Self-cancelling Postal and Revenue Stamps."

H. Patent to E. Harmon, for "Mode of Cancelling Revenue and other Stamps."

Is this classification, so far as you can see, correct, and does it include all the defendant's exhibits referred to by Mr. Robertson, except Q and R?

Ans. It is and does.

Int. 4. As I understand it, from your testimony given on the examination-in-chief, you find described in the letters patent now in suit a revenue stamp having the following features:

1st. In that it is a structure adapted to be used as a revenue stamp.

2d. In that it has two parts or portions, to wit, a stub and the body of the stamp, the two being connected, but separable, and each with a distinct function.

3d. The body of the stamp, when detached from the stub and affixed to the cask, consists of two parts—one part for permanent attachment, and the other part for removal.

4th. Being affixed, such relation exists between these two parts that their separation cancels the stamp.

5th. After their separation the removed part carries with and
58 upon it such symbols of identity between itself and the stub from which the original stamp was removed that its preservation guards against fraud.

Directing your attention to the several groups of the defendant's exhibits in their order as enumerated in the preceding question, will you please point out which, if either, of these features you find to be wanting in the exhibits of which these groups are severally made up?

Ans. Those in the fourth group, to wit, Exhibits C, L, E, and H, are

the only exhibits which indicate intention that the article described may be used as a revenue stamp. Exhibit C is of the character of a postage stamp, and may be used as a revenue stamp, in like manner as stamps for checks, proprietary stamps, &c., and is constructed so that a portion of it may be torn away from the other portion after that other portion has been attached. This stamp, then, may be considered as embodying the first and fourth features mentioned in your question, but none of the others. Exhibit E is of the same character, and in regard to it I give the same answer. Exhibit H may also be understood as possessing substantially the same features as Exhibit E, and lacks the same features as do Exhibits C and E. I would state that several of the postage stamps in the other exhibits under group one are of the same character, but no intimation is given in their description that they may be used as revenue stamps, and none of them, under any circumstances, possess any of the features except the first and fourth. Exhibit L is a revenue stamp for liquors, &c., and therefore embodies the first feature mentioned. It is of two parts, but no stub; one part contains a record at the time of separation of the two parts. After separation, the other part is attached to the barrel, and is subsequently, from time to time, marked as a record, and finally is removed entire from the barrel and returned whole and complete to the department. It therefore does not embody the second feature mentioned.

No part of the stamp is for permanent attachment, and the part temporarily attached is a whole and complete thing in itself, and not composed of two parts, separable one from the other. It therefore does not embody the third feature mentioned.

It is not cancelled in the sense of taking away a portion of the stamp attached, and therefore does not embody the fourth feature.

For the same reasons it does not embody the fifth feature.

In regard to the second group, none of them embody either of the features mentioned, unless it be Exhibit U, which under a pos-
59 sible construction may embody the second feature, to wit, a body and a stub, separable one from the other; but this construction would include such similar articles as bank check books, or books in which duplicate blanks are arranged, one to be removed and the other to remain as a record.

In regard to the third group; they may embody the second feature, under the possible construction which I have given to Exhibit U, but none of these exhibits have the other features mentioned in your question.

Int. 5. Mr. Robertson selects from all these exhibits the Exhibit U, Wilkins English patent, for "improvement in labels or tickets," and the Exhibit I, being Man's patent for "improvement in bank checks," as "being capable of use" in the same manner as the stamp described in the patent of Locke. I desire, therefore, to call your special attention to those exhibits, and give any reasons you may have for differing with Mr. Robertson as to such capability of use.

Ans. Exhibit U is in no sense a stamp, or capable of use as a revenue stamp. It is a label, and nothing more. It is composed of two or more parts, each complete in itself. All but one may be called the stub or stubs. That one is prepared so that it may be separated from the other and applied to a package to give the address, contents, and value of the package. The other part or parts are records of the part removed or label.

The label with a single stub is substantially like any common check or certificate and stub, where the check or certificate is to be used for

the special purpose intended, and the stub to be retained as a record of the same.

This label is not adapted to be used as a revenue stamp, and, therefore, has not the first feature mentioned as possessed by the stamp of the Locke patent.

So far as having a stub and body separable, one from the other, broadly considered, it does embody the second feature.

The label does not consist of two parts or portions, one for permanent attachment and the other for removal, and therefore does not embody the third feature.

There is no means provided for cancellation of the label, for the reason that no cancellation is desirable; and, further, that the removal of any material portion of the label would defeat its object; and if a part could be thus removed it would not carry with it or upon it any symbol of identity between itself and the stub, or either of the other parts.

60 The drawing shows the thing made in two portions and in three portions; but duplicating the label, certificate, or stub does not in any way qualify or change the label; it is precisely the same label, and is no more a stamp than a common bank check, and does not in any way embody the fourth and fifth features.

Exhibit I is a common bank check with a common stub. The check is provided on its face with several series of figures, each series representing the nine digits and a cypher, one series representing units, the next tens, and so on. From these different series figures may be cut representing the amount for which the check is drawn. The only object is that the check may carry with it ineffaceable evidence of that amount, and thereby prevent alteration. The part removed to deface the figures does not in any way indicate the value of the figures removed.

It possesses no requisite of a stamp character not found in common bank checks. It has not one of the features mentioned as possessed by the stamp of the Locke patent, unless it be the second, which may be understood as embodying the check and stub.

Int. 6. You say you were present during a portion of Mr. Robertson's testimony; were you present during that portion of it which was taken from the printed record in the suit of A. C. Fletcher against Marshall P. Blake, pending in the United States circuit court for the southern district of New York, by Mr. Child, the counsel for the defendant, reading therefrom, with consent of complainant's counsel, such parts of the deposition of Mr. Robertson as he desired to have incorporated into the testimony of that witness in the present suit?

Ans. I was.

Int. 7. I will read to you one or two questions to and answers from the same witness, and from the same record, which Mr. Child did not read.

On page 29, questions 32 and 33, and the answers thereto are as follows:

"Q. 32. Are the differences in the method of constructing or manufacturing the government stamps now in use and the stamps described in the Fletcher patent substantial and essential, or formal and immaterial?

"Ans. They are substantial and essential.

"Q. 33. Do you discover anything in Fletcher's patent which indicates to your mind, as a practical mechanic, a design that the Fletcher stamp may be affixed, cancelled, covered with varnish, and de-

61 stroyed, as the government stamps are, or any practical adaptability in the construction of the Fletcher stamp for so affixing, cancelling, covering, and destroying?

"Ans. I do not."

Int. 7½. Do you agree with Mr. Robertson in these answers to these questions?

Ans. I do, decidedly.

Int. 8. Do you understand that the "government stamps" referred to in the foregoing questions and answers quoted from Mr. Robertson's testimony are the same as the government stamps represented by Exhibit "Hollister Revenue Stamp" and Exhibits Q and R in this case?

Ans. I do.

Int. 9. Do you discover anything in either or any of the defendant's exhibits, and, if so, in which, indicating to your mind, or that would indicate to the mind of a practical mechanic, such construction and use of a revenue stamp as you find described in the Locke patent as specified in the first claim thereof, and as embodied in Complainant's Exhibit, "Hollister Revenue Stamp"?

Ans. I do not.

Int. 10. Wherein, if at all, do the Defendant's Exhibits Q and R differ from Complainant's Exhibit, "Hollister Revenue Stamp"?

Ans. They are identical.

Cross-examination of CALVIN G. CHILD, Esq., counsel for the defendant:

Cross-int. 11. For the purpose of understanding you correctly, please inform me what you understand by the second portion of interrogatory 4th, wherein it says, speaking of the stub and body of the stamp, that each has a distinct function.

Ans. The functions of each part, as I understand them, are that the stub is a record of the stamp separated from it, the stamp having its function as a stamp, and the stub its function as a record.

Cross-int. 12. Referring to the fourth subdivision of the same question, and directing your attention to the Locke patent, is it correct to say that the separation of the two parts cancels the stamp; should it not be, "mutilates the stamp"?

Ans. Unquestionably it mutilates, and mutilation necessarily cancels, as I understand it; and I understand the two words as applied to a stamp are analogous.

62 Cross-int. 13. Is not the whole design in taking away the removable slip, as specified in the patent, to mutilate the stamp without reference to the condition of the stamp after the slip is removed?

Ans. No, sir; the part of the stamp must remain as an indication that the stamp has been properly applied to the article.

Cross-int. 14. Referring to the first subdivision of interrogatory 4, the expression is that it is a structure adapted to be used as a revenue stamp. In your answer to that interrogatory you state that Exhibits C, L, E, and H, are the only exhibits which indicates intention that the article described may be used as a revenue stamp; do you mean by this that such intention is expressed in the patents indicated by those exhibits?

Ans. Yes, sir.

Cross-int. 15. Do not some of the exhibits of the fourth group and some of the first group, hitherto referred to by you, possess the *the* fourth requisite, as stated in interrogatory 4?

Ans. No, sir; for the reason that the fourth feature implies that the stamp shall have been detached from the stub, and after such detachment shall consist of two parts, the separation of which shall cancel the stamp.

Cross-int. 16. In the Locke patent the expression is used, "for convenience I prefer to have the stamps, after being printed, bound up in book form, &c."; do not some of the stamps referred to in the group designated as 1 and 4 come within the description that such relation exists between the two parts that their separation cancels the stamp, separating, for the purposes of this question, the binding up of the stamps in book form?

Ans. I don't understand what reference the paragraph quoted has to the cancelling property of the stamp; but in none of the exhibits referred to is there a stamp attached to a stub, and in itself formed in two parts, so that when detached from the stub it may be attached to the barrel, and a portion of it removable for the purpose of cancellation.

Cross-int. 17. In some of the exhibits referred to by you, is not the cancellation of the stamp accomplished by the separation of the stamp into parts?

Ans. I have said so.

Cross-int. 18. Do I understand you to say, in reference to the second subdivision of interrogatory 4, that a characteristic of the Locke stamp is the connection of the body of the stamp with the stub, so that the two are connected, but separable.

63 Ans. It has that feature.

Cross-int. 19. Are not the stamps described in some of the exhibits referred to by you composed of two parts connected, but separable?

Ans. Some of the stamps are constructed so that a portion may be torn away; but those two parts are not the two parts indicated by the second feature mentioned in the fourth question; in those cases both parts are stamp and neither stub.

Cross-int. 20. Do you then regard the stub as affixed to the stamp a distinguishing feature of the Locke patent?

Ans. Of the first claim, yes, sir.

JOHN E. EARLE.

64 And on the 8th day of October, A. D. 1879, the said cause was fully argued by the counsel for the respective parties before said circuit court, and on the 6th day of February, A. D. 1880, the following opinion of court was filed therein, viz:

65 Circuit court of the United States for the district of Connecticut.

BENEDICT AND BURNHAM MANUFACTURING COMPANY
v.
DAVID F. HOLLISTER.

SHIPMAN, J.:

This is a bill in equity to restrain the defendant from the alleged infringement of letters patent for an improved revenue stamp for barrels. The patent was issued to Edward A. Locke, on August 2d, 1869, and was assigned to the plaintiff on November 10th, 1875.

Prior to and at the date of the Locke invention the internal revenue

stamp which was used by the U. S. Government upon packages of distilled spirits, and which was called the "tax paid stamp," was constructed of two pieces of paper; before the stamp was printed, the paper of which the body of the stamp was composed was perforated with a round aperture, about one and a half inches in diameter;
66 to the back of the paper was then attached, by paste or mucilage, a piece of tissue paper completely covering said aperture. The stamp was then printed, the engraving covering both the body of the paper and so much of the tissue paper as appears through the aperture.

One object of Locke was to make a revenue barrel stamp, which should be so destroyed by the removal of a part thereof that the stamp could not be subsequently fraudulently used, and that the removed part should also permanently contain and exhibit such identifying marks; that the facts that the tax had been paid upon the contents of the barrel to which the stamp had been affixed, and that it had been destroyed, should always appear.

The principle of Locke's invention was to construct the stamp so that a part, upon which was impressed identifying marks corresponding with similar marks upon the stub, and which was such a well-known part that its removal would destroy the stamp, could,
67 after the stamp had been detached from the stub and had been affixed to a package, be removed from the rest of the stamp and from the barrel, and could be preserved by the revenue officer.

The portion of the Locke device which is claimed to have been infringed was constructed as follows: A piece of thin metal was impressed with letters or figures corresponding with the letters or figures upon the stub of the stamp. This piece, made of any appropriate form, was inserted in an aperture in the face of the stamp, and was retained in its place by a "backing piece" of paper, the two pieces of paper being gummed together for this purpose. This backing piece was prepared with dried gum on its outer face, so that the stamp was ready for instant application to the cask. In the specification the patentee further says: "Instead of making the removable piece out of metal, or of making it in a piece separate from the stamp, it may be made of the same piece of paper of which the stamp is composed, by
68 simply having its outline perforated after the manner of postage stamps, but ungummed at its back, so as readily to be torn away and detached from the stamp."

If the stamp was constructed according to the latter method, it would be a stamp made of one piece of paper, with identifying marks upon a portion of its surface corresponding with similar marks upon the stub, said portion being so constructed that it can easily be detached from the residue of the stamp after the whole stamp has been detached from the stub and has been affixed to the barrel. Although the patentee speaks of a backing piece of paper which retained the metal slip in its place, and was to be gummed, so as to adhere to the barrel, he does not mention this backing piece in connection with the stamp when made entirely of paper. Probably the fair construction of the specification is, that the stamp is always to be provided with a backing piece.
69 In deciding the case, however, I prefer to assume that the patentee supposed that the dried gum was needed only upon the back of that portion of the stamp which was not to be torn away.

The first claim, and the only one which is said to have been infringed, is for "a stamp, the body of which is made of paper, or other suitable material, and having a removable slip of metal, or other material, dis-

playing thereon a serial number, or other specific identifying mark, corresponding with a similar mark upon the stub, and so attached that the removal of such slip must mutilate or destroy the stamp."

The stamps which were sold and used prior to the date of this bill and since the date of said letters patent by the defendant as a collector of internal revenue in the State of Connecticut, and which was furnished to him by the Commissioner of Internal Revenue for the purpose of being affixed to packages of distilled spirits to denote the payment of tax thereon, are made as follows:

70 The body of the stamp is composed of a piece of paper of one thickness, upon which is impressed the printed matter of the stamp. A strip of blank paper is attached to the outside edges of the back of the body of the stamp. This strip is about one-third of the length of the body of the stamp, and is of the same width. When the stamp is to be used it is placed upon that part of the head of a barrel which has been previously covered with paste, is secured to the barrel by tacks, is varnished, and cancelled by a stencil-plate. When the barrel goes from the distiller or owner to the rectifier the portion over the blank strip, and which is not attached to the barrel in consequence of the intervention of the strip, is cut out and is preserved by the revenue officer. This portion has upon its face identifying marks corresponding with similar marks upon the stub. It is cut out, so that the evidence that the tax upon the contents of the barrel has been paid may be preserved, and so that the stamp may be effectually destroyed and be rendered incapable of subsequent use upon another package.

71 This kind of stamp has been used by the internal revenue bureau since January, 1876, and has been an efficacious preventive of fraud. The stamps previously in use did not accomplish this most important result.

The principal question in the case is that of infringement. The objects of the two devices are the same. Upon a narrow construction of the specification and claim the plaintiff's stamp is of a single thickness of paper, gummed upon the back, except as to the part which is to be torn or cut out. The defendant's stamp is of a single thickness of paper, not gummed upon the back, but with a blank strip protecting the portions to be cut out from the paste upon the barrel. The blank strip was described in the plaintiff's specification. The difference is, that in the use of the plaintiff's stamp the adhesive material is applied to the back of the stamp, while in the use of the defendant's stamp the adhesive material is applied to the head of the barrel. The method of construction of the two stamps is substantially the

72 same, even assuming that the "backing piece" was not intended to be used when the entire stamp is composed of one piece of paper.

An attempt was made to attach the Locke patent for want of novelty, but the two antedating patents, which were somewhat feebly relied upon by the defendant, viz. the English patent of Edward Wilkins, dated November 13th, 1851, and the patent of Albon Man, dated September 3d, 1867, refer to devices so manifestly unlike the Locke stamp, that further examination is unnecessary.

The utility and patentability of the Locke stamp cannot be controverted in view of the testimony which was introduced by the defendant respecting the various devices which the government had used and the great success of the device which was finally adopted.

Let a decree be entered for the plaintiff directing an account and an

injunction, the terms of the decree as to injunction to be settled upon hearing.

Stephen W. Kellogg and John S. Beach for the plaintiff.

Calvin G. Child, U. S. district att'y, for the defendant.

73 And on the 24th day of February, 1880, the following decree was made and entered in said cause, viz:

74 UNITED STATES OF AMERICA.

Circuit court, district of Connecticut.

At a stated term of the circuit court of the United States of America for the district of Connecticut, in the second circuit, held at the United States court-room in the city of Hartford, in said district, on the 3rd Tuesday of September, in the year of our Lord one thousand eight hundred and seventy-nine, to wit, upon the 24th day of February, A. D. 1880.

Present, the Hon. Nathaniel Shipman, U. S. district judge, holding said court.

THE BENEDICT & BURNHAM MANUFACturing Company
vs.
DAVID F. HOLLISTER.

This cause came on to be heard at this term of said court, and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

That the letters patent No. (93391) ninety-three thousand three hundred and ninety-one, granted and issued on the 3d day of Au-
75 gust, 1869, to Edward A. Locke, being the letters patent referred to in the bill of complaint herein, are good and valid in law.

That the said Edward A. Locke was the first and original inventor and discoverer of the improvement in revenue stamps for barrels, and for identifying marks, stamps, or labels for revenue purposes, as described and claimed in the said letters patent and the specification annexed thereto, and that said Edward A. Locke, on the 10th day of November, 1875, assigned and transferred said letters patent to said Benedict and Burnham Manufacturing Company, by a valid deed of assignment, duly executed and recorded in the Patent Office at Washington, and that said Benedict and Burnham Manufacturing Company, by virtue of said deed of assignment is the exclusive owner of said patent.

That the said David F. Hollister, defendant herein, has infringed upon said letters patent, to wit, on the first clause of the claim therein, and upon the exclusive rights of the complainant under the same; that is to say, by making, using, selling, and disposing of one or more
76 of the patented or improved revenue stamps for barrels, with identifying marks for stamps or labels for revenue purposes, as charged in the said bill of complaint, the same being a stamp, the body of which is made of paper, and having a removable slip or portion of said stamp, displaying thereon a serial number, or other specific identifying mark corresponding with a similar mark upon the stub, and so attached that the removal of such slip or portion must mutilate or destroy the stamp.

And it is further ordered, adjudged, and decreed that the complain-

ant do recover of the defendant the profits, gains, and advantages which the said defendant has received or made or which have arisen or accrued to him from the said infringement of said letters patent, by the making, use, sale, and disposing of the said improved revenue-stamps for barrels with identifying marks for revenue purposes, as aforesaid, together with the damages accruing to the complainant by the infringement of said patent by the defendant, by making, using, selling, and disposing of said described improvement or invention,
77 as described and secured by said letters patent No. 93391 since the 10th day of November, A. D. 1875.

And it is further ordered, adjudged, and decreed that the said complainant do recover of the defendant the costs and charges and disbursements in this suit to be taxed.

And it is further ordered, adjudged, and decreed that it be referred to Edwin E. Marvin, esq., one of the masters of this court residing in Hartford, he having been agreed upon by the parties, which is a special and sufficient reason for said appointment, to ascertain and take, and state and report to this court an account of the number of the said improved revenue-stamps for barrels made, and also the number used, sold, or disposed of by the defendant, and also the gains, profits, and advantages which the said defendant has received or which have accrued to him, and the damages sustained by and resulting to the complainant, since the 10th day of November, 1875, by and from the infringement as aforesaid of the exclusive rights of the complain-
78 ant, by the making, use, sale, and disposing of the said improvement patented by said letters patent.

And it is further ordered, adjudged, and decreed that the complainant on such accounting have the right to cause an examination of said defendant, ore tenus, or otherwise, and also the production of the books, papers, vouchers, and documents of said defendant, and that said defendant attend for such purpose, before said master, from time to time, as said master shall direct.

And it is also further ordered, adjudged, and decreed that a perpetual injunction be issued in this suit against the said defendant, restraining him, his agents, clerks, servants, and all claiming or holding under or through him, from making, selling, using, or in any manner disposing of any revenue stamps for barrels, or stamps with identifying marks or labels for revenue purposes, embracing the invention or improvements described in the said letters patent, pursuant to the prayer of the said bill of complaint.

And it is further ordered, adjudged, and decreed that the order
79 for a perpetual injunction be stayed until the master's report is filed in this court, and accepted, and until the further order of this court.

N. SHIPMAN, *Judge.*

80 And on the 20th day of July, 1881, master's report and evidence before master was filed in the words and figures following, viz:

U. S. circuit court, district of Connecticut.

BENEDICT & BURNHAM M'F'G CO. *vs.* DAVID F. HOLLISTER. } In equity.

Master's report.

The undersigned, to whom has been committed the labor of ascertain-

ing, taking, stating, and reporting to the court an account of the number of the said improved revenue stamps for barrels made, and also the number used, sold, or disposed of by the defendant; and also the gains, profits, and advantages which the said defendant has received, or which have accrued to him, and the damages sustained by and resulting to the complainant since the 10th day of November, 1875, by and from the infringement ascertained and determined by the decree herein to the exclusive rights of the complainant by such use, would respectfully report as follows, viz:

81 1. It was fully proved by the complainant, and found by the master, that the defendant, in his office of collector of United States internal revenue for the second collection district in the State of Connecticut, from the 10th day of November, A. D. 1875, up to the 20th day of June, A. D. 1881, used 11,099 of tax paid spirit stamps of the class of stamps as the exhibit which is in this case, and which is marked "Exhibit Hollister Revenue Stamp," and which said stamps were of the value, in the whole, of $394,110.20.

It is agreed and stipulated that all these stamps were furnished to the defendant prior to the bringing of this suit by the Bureau of Internal Revenue of the United States, of which the Commissioner of Internal Revenue is the official head, and were used by the defendant in the discharge of his duties as collector of internal revenue of the aforesaid district, and solely as a means of collecting the taxes of the United States.

82 To show the savings that the defendant has made by such use of the complainant's device, the complainant has placed in evidence certain reports of the Commissioner of Internal Revenue from 1875 to 1880, in which the Commissioners substantially admit:

1. That in two ways of placing illicit spirits on the market which are fully set forth and described in the one of said reports made Nov. 8th, 1875, in the two years ending June 30, 1875, the government had been defrauded of four millions of dollars, or at the rate of two millions a year throughout the whole territory of the United States.

2. That in August, 1875, the Internal Revenue Bureau of the United States adopted a plan of stamps of the class shown by "Exhibit Hollister Revenue Stamps," to prevent these frauds, and that it (this plan) has since that time proved itself of the greatest value for the purpose for which it was adopted.

3. That from that date to June 20, 1881, stamps of this class have been used by the said Internal Revenue Bureau for the purpose of preventing fraud in the placing of illicit spirits on the market, of about the value of $330,873,713.

83 It is claimed by the complainants that from this evidence I should find:

1. That two millions of dollars per annum has been saved to the government since Nov. 10th, 1875, by the adoption and use of this plan of stamps throughout the country.

2. That this defendant has saved by their use such proportion of the sum of this two million dollars per annum during the period from Nov. 10th, 1875, to June 20, 1881, as the value of the stamps he has used in his district bears to the whole value of all the stamps used in all the districts of the country during the same time, or at least some less proportion thereof.

I do not find it anywhere proved or admitted in the evidence that the United States Government has saved two millions of dollars per

annum solely by the adoption of this plan, or, in fact, any given or estimated sum in dollars.

The fact is claimed to be proved by the admission in the said reports for 1876, 1878, 1879, & 1880, to the effect that all this business
84 had been conducted without the loss of a stamp. There can be no doubt that this refers to simple matter of handling, printing, and transfer of the stamps themselves; all appear to have been accounted for in some way, but if anything more is claimed from it, the claim is met by the fact that the same statement is made in the report of November, 1875, when it is admitted that there was a loss of two million a year going on. There can be no doubt, however, and I so find, that the government has saved a very great sum of money, probably millions of dollars since 1875, by the adoption and use of the plan invented by Locke and now owned by the complainant.

It is in evidence that the said losses of two millions of dollars per annum by frauds, in placing illicit or crooked spirits on the market, before the adoption and use of the plan of the complainant's stamps, by the Internal Revenue Bureau, in 1875, were mainly at St. Louis, Milwaukee, Chicago, and Evansville, and it follows that the savings since that time by such adoption and use of the complainant's plan as
85 is proved must have been mainly at the places of the previous losses, and I so find.

Whatever the main part of this savings may be I cannot derive, with any certainty, from the evidence, and I am just as much uninformed thereby as to how much the less part of these savings is, or how it can be correctly apportioned upon the remaining districts, and as to what part of these unknown savings the defendant has made in his district, I have absolutely nothing to guide me. It is his opinion that there is no such danger of loss in his district, being a fruit-brandy producing district, as in the localities above mentioned, which are large grain-producing districts.

Nor is there any proof of a single case of savings by this defendant by the use of these stamps, or any proof that any distillery in this district, running at any stated capacity and time, since 1875, has paid any more taxes therefor than for the like capacity and time prior thereto.

I am consequently left to the finding that there are no sav-
86 ings on the part of the defendant that have been competently proved before me.

As to damages, I find that the defendant has largely used the complainant's device, which is proved to be a very valuable one for the prevention of fraud and for the purposes for which he has used it, and has in so doing trespassed upon the complainant's exclusive rights, to his damage; but I have no evidence whatever before me as to the amount of that damage, and must therefore find that the complainant is entitled only to nominal damages.

Hartford, July 8th, 1881.

E. E. MARVIN,
Master pro hac vice.

Fees:

One day at N. H. taking evidence	20 00
" " considering case	20 00
Making report	20 00
Expenses at New Haven	3 00
	$63 00

fiers' stamps to cover four thousand (4,000) gallons of spirits after rectification. A guager is detailed to gauge these spirits out of the rectifying tubs, carrying with him a book of blank stamps, to be filled up according to the contents of each package. The gauger reports in a prescribed form, that the rectifier has placed the four thousand
94 gallons in, say, four hundred packages, containing ten gallons each, and returns the stubs of the stamps filled up in accordance with this statement. The packages so represented are afterwards found to contain, say, eighty gallons each, and the stamps thereon are filled up in accordance therewith, so that, in fact, only fifty of the stamps were used to cover the "straight spirits," and under cover of the remaining three hundred and fifty, twenty-eight thousand (28,000) gallons of illicit spirits are placed upon the market. This case is by no means an extreme one, but is a fair example of what was the constant practice in the district herein specified.

2d. The other favorite method may be illustrated as follows:

The distiller sends to the rectifying house a number of barrels of spirits upon which the tax has been regularly paid. The descriptive notice aforesaid is filed and a gauger detailed, who reports the stamps destroyed, whereas the fact is that the stamps are not actually destroyed. Either the packages with the stamps uncancelled are returned to the distiller and refilled with illicit spirits, or the stamps are
95 removed and placed by the distiller or rectifier on other barrels of spirits upon which no tax has been paid. These barrels are sent to the rectifier, and by him shipped to some distant market without making any record of the transaction on his government books. A modification of this form of fraud consists in the rectifier's filing a purely fictitious notice, containing a description of spirits which he has never received, and emptying in place thereof an equal quantity of illicit spirits.

In one of the two ways above described all the frauds recently discovered have been committed, and the government has lost thereby at least four million dollars in the last two years."

IV. The checks which have lately been established to prevent the recurrance of such frauds as I have described are as follows:

1st. As before stated, every barrel of spirits produced at a distillery has a serial number, which is never duplicated. An account has been opened with each distiller, in which is entered the serial number
96 of every package of spirits produced by him. As fast as reports of rectifiers are received showing the dumping of these packages, the serial numbers are checked off and an entry made showing the date of emptying and the name of the rectifier. Transcripts have been required monthly from the books of every distiller, rectifier, and wholesale liquor dealer in the United States, containing full descriptions of the spirits purchased and sold by them. Complete abstracts are made from the transcripts, so that all the spirits of each distiller, as found in the several markets of the country, are condensed into one account monthly. These abstracts are then compared with the records showing spirits dumped by rectifiers, so that if spirits are placed upon the market after they are reported dumped, the fraud will be discovered at once. So perfect and unerring is this system that although the spirits may have passed through several hands, there is no trouble in fixing the guilt where it belongs. This prevents the reuse of stamps, which I have heretofore described as the second method of committing frauds.

2d. To aid still further in preventing this character of fraud,
97 this office has lately adopted new regulations in regard to the

use of tax paid stamps by which a portion of the stamp is cut out at the time of dumping and returned with the gauger's report. This effectually destroys the stamp and prevents its reuse, while at the same time a sufficient amount of the engraving is shown upon the slip to determine whether the stamp is genuine.

3d. To prevent what I have described as the first class of frauds, namely, removing spirits to the rectifying house without stamps and disposing of the same by filling stubs of rectifiers' stamps with a small number of gallons and the stamp with a much greater number, the following check has lately been adopted: A new series of rectifiers' stamps has been issued, in which each stamp has printed upon its face the number of gallons the package contains, so that the stub must necessarily show the same thing. Every gallon of spirits for which a rectifier's stamp is issued must of necessity be returned by the gauger and charged to the rectifier. It is, therefore, impossible for him
98 to get rid of illicit spirits, even if he succeed in removing them from the distillery to the rectifying house."

Report of 1876; page 19 & 20.

"STAMPS.

Since the last report made by my predecessor was forwarded, the plan of requiring the return of a portion of the tax-paid stamps whenever a package to which it is attached is dumped for rectification, has been found to be such a valuable preventive of fraud that it has been extended to include all stamps for rectified spirits and wholesale liquor dealers' stamps.

These three varieties of stamps for distilled spirits are now prepared at a trifling additional cost, with a paper back affixed to each in such a way that the portion of the stamp containing all the important data can be cut therefrom and filed with the commissioner or collector, thus furnishing conclusive evidence of the complete destruction of the stamps (rendering its reuse impossible), and furnishing also evidence as to the contents of the package bearing the stamp.

99 It is believed that this system affords the government a very effectual protection against the perpetration of frauds in connection with the collection of the tax on distilled spirits.

Obstacles to fraud by checks against the covering of illicit spirits in rectifying establishments being thus introduced, this office turned its attention to the protection of the government against fraud in establishments of wholesale liquor dealers. A new form of stamp was prepared to be affixed to packages of spirits filled on the premises of a wholesale liquor dealer. These stamps are only issued upon the receipt by the collector of a statement furnishing all the information regarding the package from which the new package is filled, which is shown by the stamps, marks, and brands thereon.

The following statement shows the number and value of internal revenue stamps of the various kinds issued by this office to collectors of internal revenue and purchasers of documentary and proprietary stamps during the fiscal year ending June 30, 1876, viz:

100 Description.	Number.	Value.
Stamps for distilled spirits	5,352,700	$64,842,160

This enormous business has been conducted, I am happy to report, without the loss to the government of a stamp."

Report 1877, page 36.

The following statement shows the number, description, and value of stamps issued for use for the fiscal year ended June 30, 1877:

Description.	Number.	Value.
Stamps for distilled spirits	5,107,050	$60,623,535

Report 1878, page 82.

The following statement shows the number, kind, and value of stamps issued from this office during the fiscal year ended June 30, 1878:

Kind.	Number.	Value.
Stamps for distilled spirits	3,720,050	$52,157,195

101 The plan which was adopted in 1875, of preparing certain stamps for distilled spirits, with slips of paper affixed to the backs thereof to prevent the body of the stamp from adhering to the package, so that a designated portion could be cut out when the package was emptied and returned to this office, as conclusive evidence of the destruction of the stamp, and as a voucher for the issue of other stamps, has undoubtedly been of the greatest value as a preventive of fraud."

Report 1879, page 96.

Number and value of stamps issued:

Kind.	Number.	Value.
Stamps for distilled spirits	4,381,750	$53,932,375

Report 1880, page 21.

Number and value of stamps used.

Kind.	Number.	Value.
Stamps for distilled spirits	5,107,550	$62,733,675

This fiscal year ended June 30, 1880.

(Defts. sol'r objects to the testimony as irrelevant and incompetent.) Hearing adjourned sine die.

102 And on the 1st day of August, 1881, the following final decree was made and entered in said cause, viz:

UNITED STATES OF AMERICA:

Circuit court, district of Connecticut.

At a stated term of the circuit court of the United States for the district of Connecticut, in the second circuit, held at the United States court room in the city of New Haven, in said district, on the fourth Tuesday of April, in the year of our Lord one thousand eight hundred and eighty-one, to wit, upon the 1st day of August, A. D. 1881.

Present, the Hon. Nathaniel Shipman, U. S. district judge, holding said court.

THE BENEDICT & BURNHAM MANUFACTURING Company
vs.
DAVID F. HOLLISTER.

This cause having come on to be heard upon the report of Edwin E. Marvin, esq., one of the masters of this court (special reasons for his appointment being found and assigned by this court), to whom it was
referred to ascertain and report to the court an account of the
103 number of said improved revenue stamps for barrels made, and
also the number used, sold, or disposed of by the defendant, and also the gains, profits, and advantages which the said defendant has received, or which have accrued to him, and the damages sustained by and resulting to the complainant since the 10th day of November, 1875, by and from the infringement by the defendant of the exclusive rights of the complainant, which report bears date the 20th day of July, 1881; and no exceptions having been taken to the said report, and the said cause having been argued by counsel, and due deliberation had thereon:

It is ordered, adjudged, and decreed, and this court by virtue of the power and authority therein vested, doth order, adjudge, and decree, that said report of the master be accepted, and that the complainant recover of the defendant nominal damages, to wit, the sum of one dollar. And it is further ordered, adjudged, and decreed, and this court by virtue of the power and authority therein vested, doth order, adjudge, and decree, that the said defendant pay to the said complainant the sum of one dollar.

And it is further ordered, adjudged, and decreed, that the said defendant pay to the said complainant costs in this suit to be taxed, and that the said complainant have execution for such costs, and for the
sums above decreed to be paid to said complainant as aforesaid;
104 and that the order for a perpetual injunction be no longer stayed,
unless an appeal is taken and perfected by the defendant to the Supreme Court of the United States within two months from date, said appeal to be taken to the October term of said court.

N. SHIPMAN,
District Judge.

105 I, Edwin E. Marvin, clerk of the United States circuit court for the district of Connecticut, do certify that the foregoing is a true return of the record of said court in the cause of The Benedict & Burnham M'f g Co. against David F. Hollister.

In witness whereof I have set hereto my hand and the seal of said court at Hartford, in said district, this 20th day of August, A. D. 1881.
[SEAL.] E. E. MARVIN, *Clerk.*

(Indorsement on cover:) No. 1023. David F. Hollister, collector of internal revenue, appellant, vs. The Benedict & Burnham Manufacturing Company. Connecticut C. C. U. S. Filed October 12, 1881.

Office Supreme Court U. S.
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JAMES H. McKENNEY
CLERK

113-59

In the Supreme Court of the United States.

OCTOBER TERM, 1884.

DAVID F. HOLLISTER, COLLECTOR, &c., appellant,
vs.
THE BENEDICT & BURNHAM MANUFACTURING COMPANY.

ASSOCIATION

No. 76.

APPEAL FROM UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF CONNECTICUT.

BRIEF FOR THE APPELLANT—STATEMENT OF THE CASE.

In the Supreme Court of the United States.

OCTOBER TERM, 1884.

DAVID F. HOLLISTER, COLLECTOR, &c., appellant,
vs.
THE BENEDICT & BURNHAM MANUFACTURING COMPANY.
No. 76.

APPEAL FROM UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF CONNECTICUT.

BRIEF FOR THE APPELLANT.

STATEMENT OF THE CASE.

This is a bill filed on 7th June, 1878, by the Benedict & Burnham Manufacturing Company against David F. Hollister, a collector of United States internal revenue for the second collection district of Connecticut, for the purpose of enjoining the defendant from the use of a certain revenue stamp as being an infringement of a stamp

patented as hereinafter set forth, and bringing him to an accounting with the complainant touching the gains and profits made by him and having him decreed to pay damages.

The bill (pp. 3, 4) avers that complainant is a corporation under the laws of Connecticut, and that defendant is a collector of internal revenue of the United States; that on the 3d August, 1869, letters patent were issued to one Edward A. Locke for "a new and useful improvement of a revenue stamp for barrels, and identifying marks, stamps, or labels for revenue purposes;" that on the 10th November, 1875, the said Locke assigned the said patent to the complainant; that both Locke and complainant "have made and sold revenue stamps" made of the said patent, and that their rights have been generally respected. That since the assignment to complainant it is informed and believes that defendant has tortiously made, used, and sold great numbers of revenue stamps made on the principle of said patent, and that complainant fears he will continue said infringement to its great and irreparable damage.

The letters patent to Locke will be found at pages 11–13 of the record, and an official copy, with the necessary drawings, forms one of the exhibits filed with the transcript. The assignment from Locke to complainants is to be found on page 14 of the record.

The defendant, on 2d December, 1878, filed a plea to the effect that the complainant had no faculty or power to take an assignment of the patent, and so could not maintain a suit for infringment (p. 6).

Complainant, instead of amending its bill filed a spe-

cial replication to the plea, to the effect that the assignment in question is held by it as security for a debt still owing by the patentee, Locke (p. 10).

To this replication defendant demurred (pp. 10, 11).

On the 2d December, 1878, defendant answered substantially as follows:

That the acts complained of in the bill were done by respondent as United States collector of internal revenue and by direction of the Commissioner of Internal Revenue; that any revenue stamps used by him were furnished him by the Bureau of Internal Revenue, and have been used solely in collecting taxes due the United States, and that the supply and sale of said stamps "*is a right appertaining to the proper collection and enforcement of a tax due the United States, and is not a right capable of being secured to any individual by virtue of any patent or otherwise.*"

Denies that the stamps used by respondent were in any way an infringement of the patent.

Avers, on information and belief, that the invention patented is neither new nor useful, and that the patent is not valid on that account, and because it relates to the canceling, offering, and removal of stamps and identification of packages.

That the patentee, Locke, was not the original and first inventor, and gives a list of fourteen persons to whom the alleged improvement was known before the supposed invention thereof by Locke; and names various printed publications in which the alleged improvement has been described:

Denies that he has ever used the alleged improvement

or that he has ever used any stamps embodying said alleged improvement:

Denies that the alleged improvement is useful or valuable, and that he has derived or is deriving any personal profit of any kind from the use of the stamps he is now using or has at any time used (pp. 7–10).

The complainant filed a replication to the answer. (Page 11.)

Both documentary and testimonial evidence were adduced by the complainant and defendant.

COMPLAINANT'S EVIDENCE.

1. Certified copy of the letters patent to Locke of August 3, 1869.

2. The original assignment from Locke to complainant.

3. Photographic copies of revenue stamps marked Complainant's Exhibit, Holister Revenue Stamp.

4. A stipulation that all acts done by defendant and complained of in the bill were done in the discharge of his duties as United States collector of internal revenue. That complainant's exhibit, marked Hollister Revenue Stamps, consists of photographic copies of revenue stamps furnished defendant by the Bureau of Internal Revenue after the patent was granted, and before the bill was filed, and were used and sold by defendant solely as a means of collecting taxes due the United States under and in pursuance of the laws of the United States (p. 15).

The complainant examined John E. Earle, as an expert, to explain the character of the alleged invention, and to

show wherein the revenue stamp used by the defendant as collector was an infringement thereof (pp. 15–19), and rested.

The defendant introduced a large amount of documentary evidence, consisting mainly of copies of letters patent and extracts from certain publications, tending to show that the alleged invention of Locke had been anticipated (pp. 19, 20).

He also examined two witnesses, Elverton R. Chapman and T. I. W. Robertson, as experts. Chapman, for the purpose of making a comparison between the patented and the alleged infringing stamp, and Robertson for the purpose of showing by reference to the defendant's documentary evidence, already mentioned, that the alleged invention had been anticipated, and, also, that it had not been infringed by the defendant (pp. 27–32).

The complainant recalled John E. Earle in rebuttal (pp. 32–37).

The testimony of these witnesses is not given here, because it will be found substantially in the arguments for and against the patent.

The cause came on for final hearing, and on the 24th February, 1880, the court decreed in favor of the patent, that the defendant had infringed the patent, and that defendant should pay "the profits, gains, and advantages" received by him from the use of the infringing stamp, together with complainant's costs; and to this end the cause was referred to a master to state the amount of the defendant's gains and profits, and enjoining the defendant, his agents, clerks, servants, &c., from making, selling, using, or in any manner disposing of any revenue stamps em-

braced by the alleged invention, but the order for this injunction is stayed until after the coming in of the master's report (pp. 40, 41).

On the 20th July, 1881, the master's report was filed, finding the complainant was entitled to *nominal* damages only (pp. 41–43).

On the 1st August, 1881, the cause came on to be heard again, and the court, ratifying and confirming the master's report, to which was no exception, decreed that the defendant pay the complainant the sum of $1, together with his costs, and that the order for a perpetual injunction be no longer stayed unless an appeal be taken in two months from the date of said decree (p. 49).

GROUND OF APPEAL.

That the learned court below did not dismiss the complainant's bill.

ARGUMENT.

The alleged invention, the foundation of this suit, is, taken with its necessary adjuncts, a stamp and stub, the stamp intended, when used, to be detached from the stub and affixed to the thing taxed. The essential feature of the alleged invention is that both the stub and the stamp shall bear a letter or other designation to indicate a special series, and shall bear on the right of and in juxtaposition with such serial letter or designation a number which shall be one of the consecutive numbers of the series indicated, with this difference, however, between the stub and the stamp, that the serial letter and number on the latter shall be so placed as that the portion of the

stamp containing it may be readily removed by the proper revenue officer and by its removal effect an irreparable cancellation or mutilation of part of the stamp, and at the same time serve the purpose of an identifying mark. That this slip or removable part of the stamp may answer the purpose of identification it is necessary that it shall not be made fast to the subject of tax with the rest of the stamp. This end may be effected in various ways. The one most favored by the inventor is to place the serial mark and number on a thin oblong metal plate, which is held to the back of the stamp by a strip of paper pasted around the plate, and the mark and number on the plate are displayed through an oblong opening in the stamp, which is something narrower and shorter than the plate, so as to hold it in position. Another way is to print the serial mark and number on the face of the stamp, and by perforations around them to make the surfaces bounded by the perforations readily removable, due precaution having been taken to prevent the removable surface from being made fast to the subject of tax with the rest of the stamp. Another way is to print the stamp on paper of such thickness as that each end of the metal-plate above described containing the serial mark and number may slide into slits made for that purpose on each side of the opening in the face of the stamp. And still another modification of the process of annexing the metal slip to the stamp, is to furnish it with points or ~~perforations~~ projections which puncture the face of the stamp, and are clinched on the under side of it.

The stamp used by the plaintiff in error and complained of as an infringement of the alleged invention, above de-

scribed, is also printed in juxtaposition with a stub, and when used is removed from the stub and made fast to the subject of tax. Both the stub and the stamp bear the same serial mark and number, and the stamp is cancelled by the removal by the proper officer of a transverse section taken from that part of the stamp containing the serial mark and number, such section being held as an identifying mark. To prevent the section intended for removal from being pasted to the subject of tax, a strip of paper corresponding in width with the section is pasted at each end across the back of the stamp, and thus the section is readily cut apart from the rest of the stamp.

Photographs of the Locke stamp and the alleged infringing or Hollister stamp, as the so-called infringing stamp is designated, will be found at pages 2 and 3 of the brief of Messrs. Kellogg & Beach, to which I beg to refer as affording the court a convenient means of making a comparison between the two stamps.

With a full knowledge of what this court has so weightily said touching the right of a patentee to be protected as against the Government proceeding to use his patent otherwise than in virtue of an exercise of the power of eminent domain, we respectfully submit that the granting a patent to Locke for the invention in question, being, *ex professo, exclusively* for a device to prevent frauds upon the revenue—answering no other object or purpose than one *entirely governmental*, was an act without warrant of law.

It is not pretended, otherwise than by unsupported averment, that the patentee or his assignee has ever manufactured the improved article his patent calls for. For him to do so would be a criminal act. What the patentee

claims to have invented is an element in the collection of a tax—a proceeding essentially governmental in character.

If the range of this patent were outside and beyond the sphere of a governmental function, what this court said in Cammeyer *v.* Newton (94 U. S., p. 234) and James *v.* Campbell (104 U. S., p. 358) would be applicable; but, as we have seen, it is not so. The patentee can neither make nor vend the fruit of his invention. He does not dare give his conception an objective existence. He has, indeed, sought to gain a monopoly of a more effective means of collecting a great tax.

Has the citizen a right to throw himself athwart the path of the Government, and levy a contribution on it as the condition of its going forward to the exercise of a high and vital function?

It may strike the incurious observer that there is a point of resemblance between the patented and the Hollister stamp, in the use of a paper lining or piece on the under side, to prevent a portion of the stamp from being glued or pasted to the subject of tax, but a moment's attention to the specification will show that this paper lining or piece forms no part of the patentee's claim. It is true he does suggest the use of something of the kind as one of several alternative ways of making fast the metal slip to the stamp, but that is its *sole* function, as clearly appears when the inventor varies from this device and points out that when his removable slip is of the same piece of paper as the stamp itself it shall be *ungummed*. He does not say, shall be *protected* by a backing piece or lining, the office of which, when used with the metal slip, being, in that respect, purely adventitious. Again, when the metal piece is held

to the stamp by being let into slits at each end of the aperture in the stamp no suggestion is made of a paper lining to protect the slip from adhering to the subject of tax, it being, clearly, in the inventor's mind that in using the stamp the gum or paste should be applied to its underside in such wise as to leave the removable slip untouched, instead of being put on the subject of tax, as is the practice. There is, consequently, no resemblance between the two stamps in this particular.

To simplify the case, let us eliminate from it those features of the alleged invention which are mentioned in the specification, but which cannot be claimed, seriously, to be within the lawful scope of the patent.

In the first place it cannot be pretended that the device of stub and stamp, with corresponding marks, numbers, and entries on both, is covered by the patent. The want of novelty in this particular Locke admits in his specification when he says:

> "For convenience, I prefer to have the stamps, after being printed, bound up in book form, *after the manner* of merchants' or bankers' check-books, so that each stamp, as cut out, shall bear in the book its corresponding marginal piece or stub, having thereon a record of letters, figures, marks, &c., according with those upon such stamps." (Page 13.)

Nor can it be maintained that the device of protecting the removable slip by a lining or backing piece, supposing this feature to be within the claim of the patent, is the result of an exercise of the inventive faculty. Nothing so obvious, let alone familiar, can be patentable, we humbly conceive.

The claim to cover by a patent the familiar and well known device of employing digital numbers on the stamp and stub in connection with the decimal number on both by punching the digital number required to express the contents in gallons in a given package, cannot, we submit be sustained. This element of the patent would seem to be as clearly unpatentable as the device of stub and stamp.

The result, then, of this ultimate analysis of the patent, in so far, at least, as respects the imputation of infringement, to which extent only are we called on to notice the patent, is, that the claim of Locke must be narrowed down to the device of a removable, identifying mark or label, the act of removing which effects a partial mutilation of the stamp that prevents a second use of it.

Is this device patentable? We submit that it is not; as being wholly wanting in the element of novelty. It has been anticipated.

So far as the use of marks, and removal of a part of the stamp is concerned, other patents have been issued prior to the one under which petitioners claim, and Locke's invention thereby anticipated.

1. By Fletcher, Exhibit T. Fletcher mutilates by removal of a flap or portion of the stamp upon which a part of the vignette is printed, the remaining part of the vignette being on the stamp from which the flap is removed.

He states that a stamp thus constructed may be cancelled by simply tearing off the flap, which may be separately preserved as evidence of cancellation (June 8, 1869).

2. Bonsfield's invention, Exhibit C, is substantially the same (1863).

3. Clark, assignor of Solomons, patented a stamp which, in process of removal of one of the two parts of which it was composed mutilated the stamp and left a portion of the surface unmutilated (antedated June 21, 1869, the date of filing specifications and drawings), Exhibit E.

4. Bowlsby's mode, Exhibit K, is the same (1865).

Each of these patents has a removable portion, some displaying a specific identifying mark corresponding with a similar mark upon the remaining portion of the stamp. The part removed serves as a voucher, and the removal of one part mutilates the stamp.

Whether in using the word "slip" the inventor meant to convey the idea of a sliding piece or of a long, thin piece, can make little difference. He removes part of his stamp, and in so doing mutilates it and renders it unfit for use, and that is all he does do; the inventors above referred to have done the same thing before him. So, also, have other inventors.

Kelett, Exhibit, G, patented the invention of cutting off a portion of a ticket, which was to be preserved as a voucher for the use of the ticket (June 23, 1868).

See, also, Robertson's testimony, p. 26, int. 8.

And Mr. Earle admits, testifying for petitioner (p. 37, X-int. 17), that in some of defendant's exhibits, all antedating Locke, "the cancellation of the stamp is accomplished by the separation of the stamp into parts."

Bowlsby, Exhibit L, patented a stamp almost identical with the Locke stamp, so far as the identifying marks are concerned, other than punching out numbers, as is quite apparent from the claim (July 14, 1868).

See particularly sections 6, 7, 8, and 11 of Bowlsby's claim in connection with Locke's first claim, and folios 37 and 31 of the evidence.

Mr. Earle's criticism on this stamp is that "it has no *stub*, and is not designed to be permanently attached;" but it anticipates identifying marks and a two-part record, one the voucher for the other.

Wilkins, Ex. U., invented a label of which one part served as a counterpart and voucher for the other.

It seems, therefore, that in inventing a stamp which possessed as its only characteristic, cancellation by removal of a part, and the means of identification through marks upon the stamp and upon a stub to which the stamp was attached before use, is not enough to sustain the bill.

I shall refer to respondent's exhibits in another part of my argument, all of which sustain the claim now made.

The patent in controversy also includes a system of identifying marks to be punched out from the stamp. There is no pretense that this mode is used by respondent; if it was used, the inventions referred in respondent's exhibits of punching tickets anticipate the claim.

3. The claimed invention does not rise to the dignity of an invention, and is therefore not patentable.

Locke's claim is this, so far as we are concerned, omitting the kind of slip and superfluous words: "A stamp, the body of which is made of paper, having a removable slip, displaying thereon a serial number or other specific identifying mark, corresponding with a similar mark upon the stub, and so attached that the removal of the slip must mutilate or destroy the stamp."

Assuming the invention to be simply a removable slip, so attached that the removal must mutilate and destroy the stamp, and what have we but a piece of paper in parts, either joined together partially, separated by perforations, or with one portion pasted upon the other? Is the idea of printing the stamp across both parts, assuming it to be novel, an invention? Is it an invention to separate one of the parts to destroy the entirety of the whole? Is it more than "the application and the action of old and well-known modes and materials in an accustomed manner?"

It seems to be no more of an invention than tearing off a portion of a letter, or removing a leaf from a book.

It is within the scope of Judge Blatchford's ruling in Alcott *v.* Young, 7 Reporter, 552.

We call the attention of the court to the cases of Hailes *v.* Van Wormer, 20 Wallace, 354, 368, and to Rubber Tip Pencil Co. *v.* Howard, 20 Wall., 498.

The former as to the effect of a combination; the latter as to the relation of a device to an idea.

The result of Locke's invention as expressed in the claim, is not a product of the combination into which the removable slip enters, except so far as it serves the purpose of identifying marks, nor is the device to give his idea of checks and counter-checks effect, new.

It must be conceded that we do not use the *manufactured article* of the Locke patent; our stamp differs essentially in its construction and mode of use. We deny liability even if we use an old device, by itself, which enters into his combination.

The only remaining part of the invention is the system

of checks and counter-checks, by identifying marks upon separate portions of an entire thing.

A notch to show where parts of a spherical box come together, a groove where we match parts of anything, a check numbered in the ordinary manner, are all illustrations that such an idea is not invention.

The stamp, viewed as a whole, does not show anything new or useful, either in cancellation or in the kind of identifying marks, or the manner of identifying one part with another; it is not a mechanical appliance nor a combination of any parts resulting in a new and useful whole, either in functions or as a manufacture.

A separation of a piece of paper by an intervening piece of paper from a gummed surface, in itself is as old as kite-making, and known to every school-boy. It cannot be called invention, and I have shown, if we infringe at all, it is in such use of the red slip.

We submit that the decree should be reversed.

WM. A. MAURY,
Assistant Attorney-General.

113-51

NOV 4 1884

Supreme Court of the United States.

No. 76.—October Term, 1884.

DAVID F. HOLLISTER,
APPELLANT,

vs.

BENEDICT & BURNHAM MFG. CO.
APPELLEES.

In Equity.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SECOND CIRCUIT AND FOR THE DISTRICT OF CONNECTICUT.

BRIEF FOR APPELLEES.

STEPHEN W. KELLOGG,
JOHN S. BEACH,
of Counsel.

NEW HAVEN:
TUTTLE, MOREHOUSE & TAYLOR, PRINTERS.
1884.

Supreme Court of the United States.

No. 76.—October Term, 1884.

DAVID F. HOLLISTER,
APPELLANT,

vs.

BENEDICT & BURNHAM MFG. CO.
APPELLEES.

In Equity.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SECOND CIRCUIT AND FOR THE DISTRICT OF CONNECTICUT.

BRIEF FOR APPELLEES.

STATEMENT.

The appellees are the owners of Letters Patent of the United States issued on the 2d day of August, 1869, to Edward A. Locke; for a "new and useful "improvement of a Revenue Stamp for barrels, and "identifying marks, stamps, or labels for revenue pur- "poses."

There are three claims.

The first claim, and the only one adjudged to be infringed, is for

"A stamp, the body of which is made of paper or other material, and having a removable slip of metal or other material, displaying thereon a serial number or other specific identifying mark corresponding with a similar mark upon the stub, and so attached that the removal of such slip must mutilate or destroy the stamp."

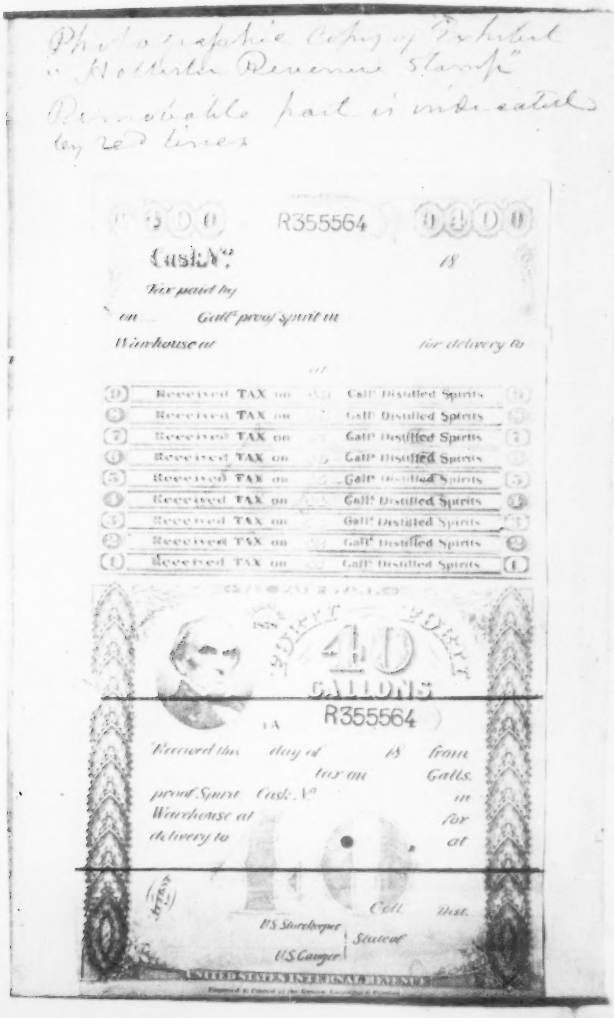
Record, page 13.

PHOTOGRAPHIC COPY OF DRAWING OF THE PATENT.

[The removable part is indicated by red lines.]

Photographic Copy of Appellees' Exhibit "Hollister Revenue Stamp," and of Appellant's Exhibits "Q" and "R," the claimed Infringing Device.

[The removable part is indicated by red lines.]



The 1st, 2d and 3d clauses of the answer set forth as a defence that the defendant is not liable in this suit, for the reason that the acts done by him for which he is complained against, were official acts, done under the direction of the proper department of the Government of the United States.

Record, page 7.

The 4th and 5th clauses of the answer allege that the thing patented is not under the laws of the United States patentable.

Record, page 8.

The 6th clause of the answer denies novelty of invention, and enumerates twenty-seven English and American patents in which "the alleged improvement has been patented before the supposed invention or discovery by the said Locke."

Record, page 8.

The 7th clause of the answer denies infringement.

Record, page 9.

The 8th clause of the answer denies utility.

Record, page 9.

So that there are three issues raised upon the record:

1st. Denial of patentability in the device, as being neither new or useful.

2d. Denial of infringement.

3d. Claimed exemption from liability by the appellant, as acting in an official capacity.

Appellees' Points.

First.

The Court did not err in holding the device to be patentable.

I. It is new.

The patent is *prima facie* evidence of the novelty of the invention therein described, and the defendant's evidence fails to disturb this presumption.

The defendant put in evidence twenty-seven different patents as antedating the invention.

Record, pages 8 and 9.

In comparing the invention with these antedating patents, we should first understand clearly the device described in the specification, and covered by the first item of claim.

The combination of features which characterize this device is

1st. In that it is a structure adapted to be used as a revenue stamp.

2d. In that it has two parts or portions, to wit: a stub, and the body of the stamp, the two being connected but separable, and each with a distinct function.

3d. The body of the stamp when detached from the stub and affixed to the cask is also of two parts, one part for permanent attachment and the other part for removal.

Ans. Both of them show printed papers consisting of a portion that is designed to be attached to the article on which it is to be used, a stub by which each paper is bound into a book, and a removable piece which is to be detached from that portion of the ticket that is attached to the article on which it is used. Both the stub and the detachable or removable piece have identifying numbers to prevent fraud, and as a means of comparing one with the other." Record, page 29.

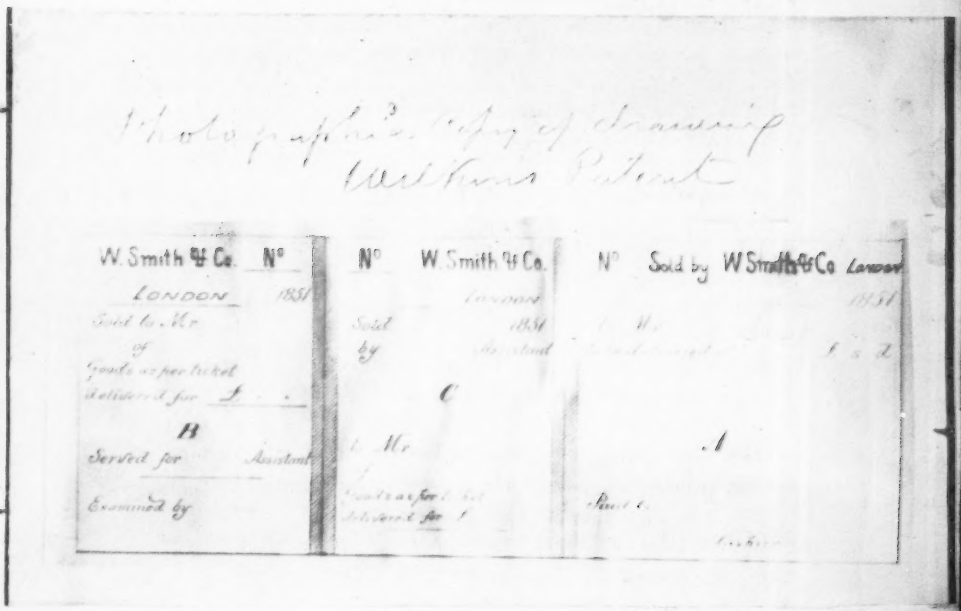
It is true the Wilkins patent shows a printed paper a portion of which, to wit, the label, is designed to be attached to the article on which it is to be used, and another portion of which is a stub, from which the label is to be removed; and it is true that the stub and the label have identifying numbers as a means of comparing one with the other.

But this being said, the description of the device so far as relates to this controversy is exhausted.

When the witness goes on as if in further description, to speak of "a removable piece which is to be detached from that portion of the ticket that is attached to the article on which it is used," he is simply repeating that the label has a stub from which it can be removed. He does not mean to say,—for he could not truly say—that the label after being detached from the stub, has a removable piece which is detachable therefrom; and when he ends his description by pointing out "that the stub and the removable piece have identifying numbers to prevent fraud, and as a means of comparing one with the other," the phrase "removable piece" refers again to the label itself, and not to any portion thereof removable from itself.

All this is evident upon inspection, and will not be denied.

PHOTOGRAPHIC COPY OF DRAWING OF WILKINS PATENT.



The Wilkins patent therefore is for a ticket or label designed to facilitate the transit of the article upon which it is used, to, and the delivery at, its proper destination. It is not adapted for use as a revenue stamp, least of all for use as a revenue stamp to be mutilated or destroyed after it is attached to the article on which it is used. The label serves its full purpose only while it remains intact and legible, and any mutilation by removal of a part, defeats such purpose, precisely in proportion to the extent of such removal and consequent mutilation.

We come now to the only other patent to which this expert witness calls our attention as embodying the Locke invention.

It is the check shown in the Mann patent, defendant's exhibit "I."

In his direct examination Mr. Robertson is called upon to compare the two devices.

"*Int.* 28. Look at Defendant's Exhibit "I," the Mann Patent of 1867, and if you understand it state what points of resemblance there are between that patent and the Locke patent?

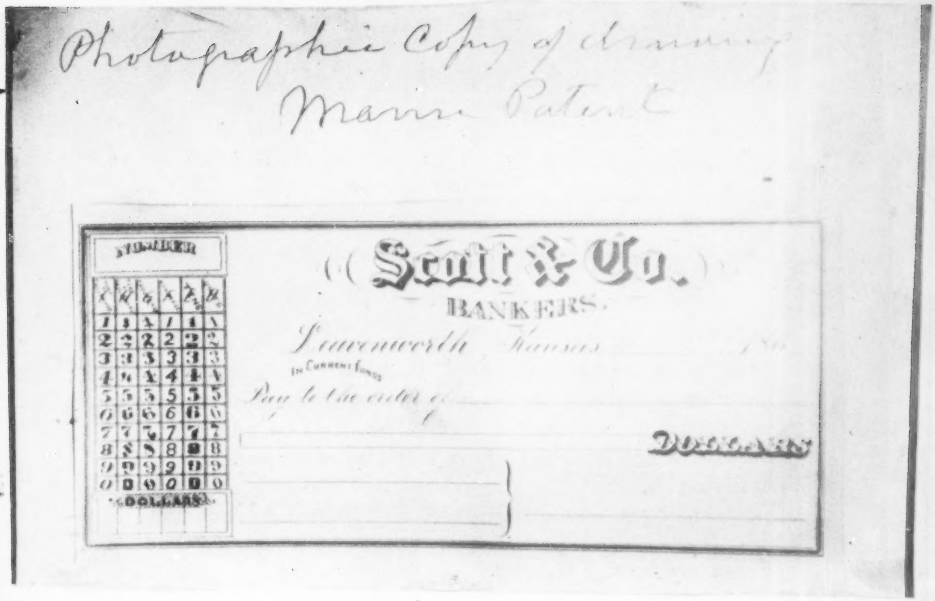
Ans. I find the instrument shown in both of the patents to be printed papers having blanks to be filled out as occasion may require, each designed to receive an identifying number, and also designed to have certain figures removed by punching or otherwise, which removed figures will also serve as a means of identifying it when used in connection with the stub with which checks are usually furnished." Record, page 28.

Inspection of the device shows that the witness has mistaken its true character.

It consisted in putting on the face of the check several series of figures; out of which, such of them were to be punched as that, after punching, the check would show the amount for which it was drawn, not to the end that the removed figures should serve as a means of identity between the check and its stub, but to the end that the check should thereafter bear upon its face indelible protection against alteration.

The punched out figures were not to be kept, nor if kept would they indicate the amount of the check, or serve any other useful purpose.

PHOTOGRAPHIC COPY OF DRAWING OF MANN PATENT.



The defense of want of novelty then stands thus.

The defendant has spread upon the record sundry American and English patents, alleged to antedate the Locke invention, some of them being for "improvements in postage stamps," some for "improvements in envelopes," some for "improvements in punches for car tickets," some for "improvements in conductor's ticket books," some for "improvements in coupon railroad tickets," some for "improvements in bank checks," some for "improvements in labels."

The defendant's expert after pointing out certain isolated supposed resemblances between these and the device in controversy, is asked to designate which of them embodies the characteristics of the Locke patent.

In answer to this question he excludes all but two.

In the two patents which he selects, there is no hint that either structure is capable of use as a revenue stamp, nor is there any suggestion that the label in the one patent, and the check in the other, when detached from its stub is to consist of two parts, one part intended for permanent attachment, and the other part intended to be removed, and of course therefore no suggestion that the two parts are to have such relation to each other and to the stub, that their separation cancels the affixed part of the stamp, while the removed part retains proof of identity between itself and the stub.

The opinion of the Circuit Court disposed—and we submit rightly disposed—of this defence of want of novelty, in this wise:

"An attempt was made to attack the Locke patent for want of novelty, but the two antedating patents, which were somewhat feebly relied upon by the defendant, viz: the English patent of Edward Wilkins, dated November 13, 1851, and the patent of Albert Mann, dated September 3d, 1867, refer to devices so manifestly unlike the Locke stamp, that further examination is unnecessary." Record, page 39.

II. The device is a useful one.

Not simply that it has enough utility to save it, within the meaning of the patent law.

The witnesses for the defendant being asked to measure its utility by its actual saving to the government were compelled to count by millions before they touched the limit of its value.

CROSS-EXAMINATION OF E. B. CHAPMAN.

"*Cross-Int.* 9. You say you have been at the head of the stamp division of the internal revenue since about the year 1872, and are familiar with the construction and use of revenue stamps by that department from 1869 up to the present time, referring now to the complainants' exhibit "Hollister Revenue Stamp" and the defendant's exhibits "Q" and "R," has the device embodied in those exhibits proved useful to the government in guarding against frauds upon the revenue?

Ans. It has very great.

Cross-Int. 10. You say that the stamps illustrated by these exhibits have been in use since 1876; can you give a general estimate of the annual saving of the revenue to the government which has resulted from their adoption, and to simplify the question, would you estimate it by hundreds of dollars or thousands of dollars, or hundreds of thousands of dollars, or by millions?

Ans. Without having any data at hand, and judging only from the large losses which it is supposed the government was subjected to prior to the adoption of this device, it is my judgment that the device coupled with the checks instituted in connection therewith, has resulted in saving of millions of dollars since 1876.

Cross-Int. 11. Is not the utility of the checks to which you refer, largely due to and dependent upon the device spoken of?

Ans. Many of them are." Record, page 24.

We submit, therefore, that the Circuit Court was right in holding that,

"The utility and patentability of the Locke stamp cannot be controverted in view of the testimony which was introduced by

the defendant respecting the various devices which the government had used, and the great success of the device which was finally adopted." Record, page 39.

Third.

The Circuit Court did not err in adjudging infringement.

It is curious to note how keen-sighted the expert witnesses for the appellant were in detecting resemblances when the question of novelty was at issue, and how dull their vision when the question of infringement came up.

Mr. Robertson could see clearly features in patents for postage stamps, envelopes, ticket punches, bank checks and railroad labels, so nearly resembling those described in the Locke patent, as that under his description of such similarity, counsel relied upon those patents as antedating the Locke device; but the moment these experts were called upon to compare the device used by the defendant with the description given in the Locke patent, they shut their eyes, and failed to discover any substantial resemblance.

But it is only because they shut their eyes. As soon as by cross-examination they were compelled to open their eyes and look, they saw and were forced to admit they saw, not only substantial resemblance but substantial identity.

CROSS-EXAMINATION OF MR. CHAPMAN.

"*Cross-Int.* 12. Calling your attention now to complainants' exhibit "Hollister Revenue Stamp" for another purpose, will you please state whether you find that it consists of a stamp attached to a stub and capable of being removed therefrom?

Ans. The expression "attached" to a stub might imply that at some period of manufacture the stamp was detached therefrom, the stamp and the stub are printed simultaneously from the same plate upon one piece of paper, and the stamp can be separated from the stub.

Cross-Int. 13. If then, I should substitute the word "connected" for the word "attached" you would, as I understand it, answer in the affirmative?

Ans. I would.

Cross-Int. 14. Do you find in the construction of that device that after the stamp has been detached from the stub and affixed to a cask or package that a portion of the stamp can be removed, leaving the remaining portion attached or affixed to the cask or package?

Ans. I do.

Cross-Int. 15. Is that removable portion of the stamp a part of the same piece of paper of which the stamp is composed?

Ans. It is.

Cross-Int. 16. Do you find that there is upon that removable portion an identifying mark, or a mark placed thereon for the purpose of providing for identity?

Ans. I find the serial number of the stamp which I suppose is what may be called an identifying mark.

Cross-Int. 17. Do you find upon the stub from which the stamp has been detached a serial number or what may be called an identifying mark, corresponding with that upon the stamp?

Ans. I do.

Cross-Int. 18. Is there such a relation existing between the removable portion and the body of the stamp after it is affixed, as that the act of removal will effectually cancel the stamp?

Ans. It will effectually destroy the stamp. "Cancel" has a technical meaning in our law, and implies an act to be per-

formed by the person affixing a stamp, at the time it is affixed and before the package to which it is attached is placed upon the market."

How is it in the light of these frank admissions that every element of the first claim of the patent is to be found in the Hollister stamp, that these experts are willing to say, no infringement results?

We do not need to go far to find the answer.

They have not, or had not when they gave that opinion, studied the patent. They seem to have assumed that in the stamp of the patent, the "removable portion" of the stamp must be a "slip of metal or other suitable material," separate and distinct from the body of the stamp; and not finding such slip in the Hollister stamp, they felt warranted in giving their opinion as they did.

Mr. Robertson is silent as to his reasons for the opinion he gives. His only testimony upon the issue of infringement is as follows:

Int. 40. Taking the first claim of the Locke patent into consideration, and the stamps used by the government, referred to in your previous testimony, is there any substantial point of resemblance between the stamps referred to in the Locke patent, and exhibits "Q," "R," "Hollister's Revenue Stamps," other than in the employment of identifying marks upon the stamp and upon the stub to which it is attached, as specified in the Locke patent?

Ans. In my opinion there is not. Record, page 31.

It is from Mr. Chapman that we learn the reasons upon which the defendant relied in support of the claim of non-infringement. He is asked:

Int. 4. Have you examined the Locke Patent for Revenue Stamp which is in controversy in this proceeding?

Ans. I have.

Int. 5. In what way, if any, does it resemble the stamps hitherto referred to by you, and the stamp complainants' exhibit Hollister Revenue Stamp?

Ans. It appears to resemble it in that it has a stub and a serial number to be placed upon both stamp and stub, and there appear to be blanks for the signatures of the collector, storekeeper and guager, I see no other points of resemblance.

Int. 6. Taking the first claim of the patent into consideration, is the stamp used by the government referred to in your previous testimony described in or indicated by such claim, and if so, in what respect?

Ans. I think not. The first claim provides for a stamp the body of which is made of paper or other suitable material, and having a removable slip of metal or other material, which slip *is to be so attached* that its removal must mutilate or destroy the stamp. The stamp used by the government has not *attached thereto* a removable slip, the removal of which must mutilate or destroy the stamp. The portion of the claim relating to a serial number or other specific identifying mark corresponding with the similar mark upon the stub may be considered as a substantial description of the use of serial numbers on the stamps used by the government.

Record, pages 23 and 24.

The sole difference pointed out and relied upon is, that in the patent, the removable piece consists of a separate slip of metal or other material; whereas in the Hollister stamp it is a part of the same piece of paper of which the stamp is made.

These experts, we insist, could not, in giving this opinion, have studied the patent; if they had, they would have found the precise feature pointed out by them as a "difference," described by the patentee in the specification as one of the forms of device which embodied his invention.

"Instead of making the removable piece out of metal, or of making it in a piece separate from the stamp, *it may be made of the same piece of paper of which the stamp is composed,* by simply having its outline perforated after the manner of postage stamps, but ungummed at its back, so as to be readily torn away and detached from the stamp." Record, page 13.

Fourth.

The Supreme Court, if concurring with the Circuit Court that the patent is valid and has been infringed, ought not to reverse the judgment under the defendant's claim of exemption from liability by reason of the fact that the acts of infringement were done by him in his official capacity as collector of internal revenue for the United States.

The answer sets up:

Second: And your respondent says that the only way in which he has used revenue stamps as complained of by the petitioner is in the supply and sale of the same to persons liable to tax, as such collector, and that such stamps so sold are prepared by the Treasury Department of the United States and that the supply and sale of said revenue stamps by said collector as aforesaid, as he is informed and believes is a right appertaining to the proper collection and enforcement of a tax due the United States, and is not a right capable of being secured to any individual by virtue of any patent or otherwise.

Record, page 7.

Clearly this is no valid defense in the form in which the answer presents it.

"That the government of the United States when it grants letters patent for a new invention, or discovery in the arts, confers upon the patentee an exclusive property in the patented invention, that cannot be appropriated or used by the govern-

ment itself without just compensation, any more than it can appropriate or use without compensation, land which it has appropriated to a private purchaser, we have no doubt."

Campbell vs. James, 104 U. S., 556.

In *Campbell vs. James* doubts were suggested as to the proper remedy by the patentee and as to whether an action could be sustained for infringement "against a public officer who acts only for and in behalf of the government." But the Court add, "as the conclusion which we have reached in this case does not render it necessary to decide this question we reserve our judgment upon it for a more fitting occasion."

Since *Campbell vs. James* was decided, the case of the *United States vs. Lee*, 106 *U. S.*, 19, and that of *Cunningham vs. New Brunswick & Macon Railroad Company*, 109 *U. S.*, 446, have presented fitting occasions for solving the doubt suggested in *Campbell vs. James.*

In neither case was the opinion unanimous.

He would be a bold advocate who should venture an attempt to add to these judicial arguments upon the one side or the other.

The conclusion reached by the majority of the Court, so far as relates to this controversy, may be thus condensed.

While courts will refuse to take jurisdiction in any suit in which a sovereignty, national or state, is made defendant without its consent, their jurisdiction is not ousted because an individual defendant claims that he did the alleged wrong in an official capacity and under the orders of the government. He must show

not only that what he did, he did officially, but that he did it lawfully.

If we are right in this, it is no defense for the defendant to set up "that the only way he has used revenue stamps as complained of by the petitioner is in the supply and sale of the same as collector of internal revenue." He does not thereby oust the Court of its jurisdiction. Because he has in so doing unlawfully and without authority of law appropriated and used property belonging not to the United States but to the plaintiff, just as if he had trespassed upon land patented to the plaintiff as a private purchaser.

If in such case the trespasser upon the patented land should deny the validity of the grant from the government to the plaintiff, and should also rely in his defence upon the claim that he was acting in an official character as a surveyor appointed by the United States and under the orders of the government, it would present the precise issue presented here.

Here, as in *United States vs. Lee*, the sole issue is as to title to property.

It is the validity of the grant which is in issue on this appeal, and nothing else.

The appellee was content with a decree affirming the validity of the grant with nominal damages of one dollar. But the appellant was not content; he insisted that the appellee had no property under this grant; that the property it purports to convey to the appellee is not exclusive, but is common property belonging to the public, and therefore open to him to

appropriate and use officially or individually without liability.

We submit that under such an issue, the jurisdiction of the Court is—to repeat the illustration—as clear as if the suit had been in favor of a private purchaser to whom land had been patented, against an official trespasser who denied the validity of the grant. If the illustration be apt, and for its aptness we appeal to *Campbell vs. James*, the jurisdiction of the Court in this case, under the reasoning and conclusion of the majority of the Court in *United States vs. Lee*, and in *Cunningham vs. New Brunswick & Macon Railroad Company*, rests upon solid rock.

JOHN S. BEACH,
Of Counsel for Appellees.

113-59

Supreme Court of the United States,

October Term. 1884.—No. 76.

DAVID F. HOLLISTER,

APPELLANT,

vs.

BENEDICT & BURNHAM MFG. CO.

APPELLEES.

ASSOCIATION

In Equity.

APPEAL FROM THE CIRCUIT COURT FOR DISTRICT OF CONNECTICUT.

S. W. KELLOGG,
JOHN S. BEACH,
of Counsel.

Brief of S. W. Kellogg for Appellees.

REPUBLICAN Print, Waterbury, Conn.

Supreme Court of the United States,

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Brief of S. W. Kellogg for Appellees.

STATEMENT.

Letters patent were granted to Edward A. Locke, August 3d, 1869, for an improvement in revenue stamps for barrels, with identifying marks upon the stamp and stub, as described in the specifications. The letters patent were duly assigned, for a valuable consideration, on the 10th day of November, 1875, to the Benedict & Burnham Manufacturing Company, a corporation located at Waterbury, Conn. [See Record, p. 14.]

The appellant filed a plea averring that the plaintiff had no right or authority by law to own or hold said patent,

and no power to institute or maintain any suit for the infringement of said patent. Record, p. 6.

The complainant filed a replication to said plea, alleging that it ought not to be barred from maintaining this suit for the reason that it had full authority under the law to hold and own said patent, it having been duly assigned to said corporation, for the consideration stated in the replication. To this replication a demurrer was filed; and upon argument the same was overruled. Record, pp. 10 and 11.

The defendant thereupon filed an answer to said complaint, alleging among other things that all the acts com plained of were "done and performed by him in the discharge of his duties as Collector of Internal Revenue for the United States for a designated collection district of the State of Connecticut, and by direction of the Commissioner of the Internal Revenue;" and that the revenue stamps used by him were furnished by the Bureau of Internal Revenue, for use in the discharge of his duties as collector, and used by him "solely as a means of collecting taxes due the United States."

The validity of the patent was also denied for want of novelty, by reason of a multitude of alleged prior patents claimed to embody the same invention, as set forth in the answer; all but two of which were abandoned by the defendant on the trial as utterly dissimilar to this invention.

The Court says of those two that they "were somewhat feebly relied upon by the defendant," and refer to inventions or devices "manifestly unlike" the stamp or invention in this case.

Points for Appellees.

I.

The Court rightly overruled the demurrer of the defendant to the replication. The plaintiff had authority by the law of Connecticut to take said patent in payment or as security for a debt due.

The law in regard to such corporations is as follows:

"Every such corporation may hold any property necessary for its purposes, and such as shall be taken in payment of or as security for debts due it."

Gen. Statutes of Connnecticut, 1875, p. 313.

And the 2d section of the charter of the plaintiff corporation granted by the State of Connecticut, expressly confirms the ownership and title of this patent in the plaintiff. The section is this:

Sec. 2. Said Benedict & Burnham Manufacturing Company shall be and remain a body politic and corporate by that name, located at said Waterbury, and shall have and enjoy its said corporate franchise, and all the rights and privileges herein granted for the purpose of manufacturing and dealing in all kinds of brass, copper and German silver goods, plated ware and metals composed wholly or in part of copper, brass or German silver, and all articles composed in whole or in part of metal which it shall deem expedient, and to do such other things as are incident to the prosecution of said business, and to exercise such mercantile powers as may be convenient and necessary for the successful prosecution of said business, and in and by said corporate name said corporation shall be, and is hereby *vested with the title* to all the goods, chattels, lands, buildings, machinery, property, choses in action, trade-marks and effects of whatever nature, heretofore acquired by, and now belonging to said corporation, and is hereby authorized and empowered, in addition thereto, to purchase, take, hold, occupy and enjoy to itself and assigns any such property, real or personal, including letters patent, as will enable it the better to carry on said business to advantage, and the same may manage, control, convey, sell and dispose of at pleasure; may take and execute

leases of real estate, may sue and be sued, defend and be defended in any court of record or elsewhere, and may have and use a common seal, and alter the same at pleasure."

Special Laws of Conn. 1879, p. 266.

II.

This suit was brought for the sole purpose of testing the validity of the patent, and deciding the question of infringement by the use and sale of the internal revenue stamps by the defendant. It was not brought for the purpose of collecting any large sum of money from the defendant as a government officer, or from the government through him; for it was not brought in a district where large sums had been saved to the government by the use of the invention. The damages are nominal. The only questions are:

Is the patent a valid one, and has the defendant infringed it by the use and sale of the stamps?

We submit that this Court ought to hold that the Circuit Court had jurisdiction for this purpose.

It is true that in *Campbell* vs. *James*, 104 U. S. 359, a doubt is expressed whether a suit should be sustained against a public officer, who acts only for and in behalf of the government; but the point was not decided. That case differed essentially from this, as there was a large amount of damages against the defendant, as found by the report of the master.

The plaintiff here had no possible way of trying the validity of the patent and the question of infringement, except by a suit against a government officer; for no one but a government officer could use the invention.

The plaintiff should not be left remediless, under the Constitution; and this Court should not deprive him of the only means of ascertaining his rights, upon a question of jurisdiction.

The citizen should have the benefit of the doubt, under the Constitution, if there is any doubt. But this Court in the later case of *United States* vs. *Lee*, 106 U. S. 196, has held that an action will lie "against a public officer" or agent who acts only in behalf of the government. The authority and reasoning in that case is conclusive in favor of the plaintiff, upon the question of jurisdiction. *Osborne* vs. *Bank of United States*, 9 Wheat. 738; *Grison* vs. *McDowell*, 6 Wall, 363; *Brown* vs. *Huger*, 21 How, 305; and other cases cited and approved in *United States* vs. *Lee*.

In the latter case, the United States was not in fact a party in the Court below, though it assumed the defense of the case, as it has done here. The real defendants in the case were Kaufman & Strong, the agents of the government holding possession of the property. The Attorney General filed a motion to dismiss the case in the Court below, for want of jurisdiction—without as therein stated "submitting the rights of the government of the United States to the jurisdiction of the Court." This Court expressed some doubt whether it could recognize the United States as a party in this Court to prosecute its writ of error in its own name; but as the real parties, Kaufman & Strong, were also here on their writ of error, and no question was made in the argument upon this point, this Court proceeded to dispose of the whole case. In the opinion of the Court by MR. JUSTICE MILLER, we find this question stated as follows:

"The counsel for plaintiffs in error, in behalf of the United States, assert the proposition, that though it has been ascertained by the verdict of the jury, in which no error is found, that the plaintiff has the title to the land in controversy, and that what is set up in behalf of the United States is no title at all, the court can render no judgment in favor of the plaintiff against the defendants in the action, because the latter hold the property as officers and agents of the United States, and it is appropriated to lawful public uses.

"This proposition rests on the principle that the United States cannot be lawfully sued without its consent in any case, and that no action can be maintained against any individual without such consent, where the judgment must depend on the right of the United States to property held by such persons as officers or agents for the Government.

The first branch of this proposition is conceded to be the established law of this country and of this Court at the present day; the second, as a necessary or proper deduction from the first, is denied."

The Court draws the distinction very clearly between the bringing of a suit against the United States without its consent, and the right to bring a suit against agents or officers of the United States for wrongful or tortious acts done by them to the property of the citizen This patent is as much the property of the owner as the Arlington estate was the property of Lee. When the patent was granted the United States compelled the patentee to pay the same fees that other patentees by law are required to pay. No reservation could be made by the Government of the right to use the same. The Government was not obliged to use it. It could adopt some other device, as it repeatedly endeavored to do, for the safe collection of its taxes. This appellant had no right wrongfully or tortiously to appropriate our property without compensation, even if so directed by the proper officers of the Government. This Court has repeatedly held, and re-affirmed in the case of *Campbell* vs. *James*, that the exclusive property of the patentee in his invention is his own against the government and its officers, as much as against any individual; and that it cannot be taken or used by the government or its officers without just compensation. The owner of the patent cannot sue the government without its consent; he can sustain a suit against the officer or agent, who wrongfully or unlawfully uses his invention without compensation, though that use be directed by the government through its appropriate department. This doctrine is recognized not only by the majority of this Court, but also in the opinion of the minority in

United States vs. *Lee*. In the very able and learned opinion of MR. JUSTICE GRAY, dissenting, p. 234, he says:

"Any action, personal or real, against officers of the sovereign, who justify under a revenue law, may be removed into the Court of Exchequer, and under the acts of Congress into the Circuit Court of the United States. If it is an action of tort to recover damages only, it may there proceed to trial."

Again on page 236, we find reference to *Vavasseur* vs. *Krupp*. 9 Ch. D. 351, where the agent of the sovereign power of Japan had been sued for an infringement of an English patent on shells. Lord Justice Brett is quoted:

"If it is an infringement of the patent by the Mikado, you cannot sue him for that infringement. If it is an infringement by the agents, *you may sue the agents for that infringement, but then it is the agents whom you sue.*"

In the still later case of *Cunningham* vs. *Macon & Brunswick R. R. Co.*, 109 U. S. 446, the authority of *United States* vs. *Lee*, upon this point, is recognized by the whole Court. The Justices dissenting rely especially upon the doctrine established in that case for the ground of their dissent. It is true that the decree of the Circuit Court dismissing the bill was affirmed in that case, upon the ground that the facts alleged in the bill showed that relief could not be granted, without making the State of Georgia a party, and the Court had no jurisdiction in that event. But the majority of the Court expressly reaffirm the decision in *United States* vs. *Lee*, with limits defined in the opinion, which clearly include the case now before the Court. The United States is not a party at all in this case; it is merely an action against an officer or agent, for tortions and wrongful acts done by him in violation of the rights of the appellees. It is only in cases where it can be clearly seen, that the State or the United States must be an indispensable party to enable the Court to grant the relief prayed for, that the Court will refuse to take jurisdiction. We submit, therefore, that the doctrine established by the decision of

United States vs. *Lee* remains unshaken; and its authority is reaffirmed and strengthened by the unanimous opinion of the Court in this later case.

III.

The questions of the novelty of the invention or the validity of the patent, and of its infringement by the appellant, are fully presented in the brief of my associate.

If the Court should find no error in the record upon these questions, as we think it plain that it cannot find error as the record stands, we respectfully claim a decision for the appellees, as the only way left for opening a door for justice to a citizen of the United States, whose property has been taken without any or just compensation.

S. W. KELLOGG,

of Counsel for Appellees.

11359

Supreme Court of the United States,

October Term. 1884.—No. 76.

DAVID F. HOLLISTER,

APPELLANT,

vs.

BENEDICT & BURNHAM MFG. CO.

APPELLEES.

In Equity.

APPEAL FROM THE CIRCUIT COURT FOR DISTRICT OF CONNECTICUT.

S. W. KELLOGG,
JOHN S. BEACH,
of Counsel.

SUPPLEMENTAL BRIEF FOR APPELLEES IN REPLY.

REPUBLICAN Print, Waterbury, Conn.

SUPREME COURT OF THE UNITED STATES.

No. 76. OCTOBER TERM, 1884.

DAVID F. HOLLISTER, APPELLANT,

vs.

BENEDICT & BURNHAM MF'G CO., APPELLEES.

Supplemental brief of Appellees in reply to certain antedating patents cited by the Appellant in argument, filed with the consent of Counsel for Appellant.

These patents are:

1. The Fletcher Patent, Exhibit T.
2. The Bonsfield Patent, Exhibit C.
3. The Clark-Solomon Patent, Exhibit E.
4. The Bowlsby Patent, Exhibit K.
5. The Kellet Patent, Exhibit G.
6. The Bowlsby Patent, Exhibit L.

None of these patents received attention in the original brief of the Appellee, because

1st. None of them appeared upon the printed record.

2nd. Neither of them was relied upon in the Court below by witnesses or by counsel, as affecting the novelty of the Locke device.

3d. The Appellee had no notice that they would be cited upon argument here, as the Appellant's brief was not filed until the day on which the case was called.

4th. Judge Shipman in his opinion passed them by, as being for devices so manifestly unlike the Locke Stamp as not to call for comment. Record page 39.

But all these six patents are by stipulation now before this Court as part of the record, and are open for consideration.

The first four, viz:

The Fletcher Patent, Exhibit T.

The Bonsfield Patent, Exhibit C.

The Clark Patent, Exhibit E.

The Bowlsby Patent, Exhibit K.

Each has for its object, the more complete and total cancellation of United States stamps which are affixed to letters, deeds, contracts, &c., the leading object of each inventor being to so cancel a postage stamp, as to forbid its second use. The office of the respective devices in each case ceased with the cancellation of the stamp

The Appellant in his brief on page 12, referring to these four patents, says,

"Each of these patents has a removable portion, some displaying a specific identifying mark corresponding with a similar mark up n the remaining portion of the stamp. The part removed serves as a voucher, and a removal of one part mutilates the stamp."

We submit that in this statement the Appellant is mistaken. It widens the field of the invention as described or claimed in either of these patents, far beyond its legitimate limits.

So much of the statement as says that "each of these patents has a removable portion, and the removal of one part mutilates the stamp" is true, and so much only.

In neither patent, does the removable part display "a specific identifying mark corresponding with a similar mark on the remaining portion of the stamp;" and in neither, does "the part removed serve as a voucher."

The only one of these four patents in which there is any hint or suggestion that the removable part may be preserved for any purpose, is in the Fletcher Patent, Exhibit T.

The Appellant rightly selects the Fletcher Patent as the type of the other three, and concedes that if anticipation is not to be found in that patent it does not exist in the other three.

We may therefore restrict our investigation to the Fletcher Patent.

The Patentee says his invention consists,

"In providing the stamp with a flap or flaps covering a portion of its face and arranging the requisite design or printed matter on such stamps to extend over the flap or flaps, and remaining or uncovered portion of said face or body of the stamp.

By this application of my invention as applied to an adhesive stamp whether for internal or other purposes, said stamp may be cancelled by tearing off the flap or flaps, which if necessary may be preserved as evidence of the cancellation; or where not required to be preserved, the flap or flaps may either be torn off and thrown away, or be so mutilated by the act of cancelling as heretofore practiced on postage stamps, (which and other adhesive stamps my invention is equally applicable to) as that it will be impo-sible to use the same stamp over again without detection of the fraud;"

And the claim is for,

"A postage or revenue stamp having a portion of its surface composed of thin or fragile paper or other suitable material loosely attached, and on which a portion of the design or other matter is printed, substantially as and for the purposes set forth."

This device was not found to be of practical utility and never went into general use.

If it had gone into use, it is obvious that all the flaps torn from a million of postage stamps would display the same identical "specific mark," und either one of the million mutilating flaps being selected, it would correspond with the other nine hundred and ninety-nine thousand nine hundred and ninety-nine mutilated stamps as accurately and completely as it would correspond with the particular stamp, the mutilation of which was caused by its removal therefrom.

The removable portion of the Fletcher Stamp does not therefore have, as the Appellant assumes, a specific mark verifying its former identity with the stamp from which it was removed, and for that reason its preservation cannot serve as a voucher in any other sense than that a correct count of the number of flaps so preserved—if they were all kept and none lost—would show the number of stamps used and cancelled in a particular office during a given period.

The Locke Stamp is a combination of three parts, 1st, a part which is designed to become a stub when the stamp proper is separated therefrom, and displays a serial number. 2d, a constituent part of the stamp proper which is designed for permanent attachment to the barrel. 3d, a

constituent part of the stamp proper displaying the same identifying serial number as the stub, which part after the stamp proper has been affixed to the barrel, bears such relation to the permanent part, that it can be so removed therefrom as to retain its own integrity, but mutilates and thereby cancels the stamp by its removal.

As this description of the Locke device applies equally to that, and to the "Hollister Revenue" stamp. we may unite the two in our enquiry whether either stamp is in whole or in part, covered by the Fletcher patent.

It would not follow of course because the Fletcher combination of two parts should be found in the Locke combination of three parts that the Locke invention was anticipated by Fletcher.

The combination of the three parts of the Locke stamp might involve the cancelling combination of the two parts of the Fletcher stamp, and thereby infringe upon and become subordinate to the Fletcher patent, and yet at the expiration of that patent, become and remain an invention secured by a valid patent, untouched by Fletcher as an anticipation.

But on the other hand, if it shall be found that the cancelling combination of the two parts of the Fletcher stamp is no part of the Locke or Hollister revenue stamp, and therefore that no element of the combination in the Locke or Hollister revenue stamp is covered by the Fletcher patent, then it would of course follow that the Fletcher patent has no claim to anticipation.

It has been so found by this Court, in *Fletcher vs. Blake* decided December 6th, 1880, reported in 19 Off. Gaz. 221.

Mr. Justice Harlan after reciting the patentee's description of the Fletcher Stamp, comparing it with a Government Revenue Stamp, (which was a duplicate of the "Hollister Revenue Stamp") used by the defendant in that case, says,

"Upon comparing the stamp thus described with the stamp used by the defendant, we are satisfied that the latter is not covered by the plaintiff's patent. It is a different article altogether from that described in the specification and claim of the plaintiff."

The direct issue having been adjudicated, its further collateral discussion before the same tribunal, would not seem profitable.

The two remaining patents cited by the appellant are,

The Kellet patent, Exhibit G.

The Bowlsby patent Exhibit L.

The Kellet patent is for a punching or cutting instrument by which coupons attached to a railroad ticket are to be sheared off by the conductor, in such relation to a closed box, as that when thus sheared they drop into the box and beyond the control of the conductor.

Its description is enough to show that it has no bearing on the novelty of the Locke device.

The Bowlsby patent, Exhibit L. is for a stamp composed of two parts only. It lacks the feature relied upon by the Appellant in the Fletcher and kindred devices, of being cancelled by a removal of a part of the stamp after the stamp is affixed. Indeed the Bowlsby stamp after being put upon the barrel is never cancelled at all, for it is not intended to be permanently affixed, but a record is made thereon from time to time by the proper officers, and the record being completed, the stamp is removed

entire and returned to the department in its integral form and substance.

It therefore lacks every element of the first claim of the Locke patent, except that it is "a stamp the body of which is made of paper." It does not contain or purport to contain as part of its structure, "a removable part displaying thereon a serial number or other specific identifying mark corresponding with a similar mark upon the stub, and so attached that the removal of the part must mutilate or destroy the stamp."

The three elements which constitute the novelty of the invention, are the same in the Locke pateut, and in the "Hollister Revenue" stamp. Locke's specification says, Record p. 13.

"The removable piece" * * "may be made of the same piece of paper of which the stamp is composed, by simply having its outline perforated after the manner of postage stamps, but ungummed at the back, so as readily to be torn away and detached from the stamp."

The perforating is no part of the patent; that is conceded to be old. It was only for convenience in tearing away the removable part of the stamp. It can make no difference with the question of infringement, whether the removable portion of the stamp is torn away, or cut out. Nor can it make any difference, as Judge Shipman says, whether the gum or adhesive material is applied to the back of the stamp, or the head of the barrel where the stamp is affixed. "The method of construction of the stamps is substantially the same."

Will the Court pardon us in conclusion, for calling attention to the contrast in utility, between these antedating patents and the Locke device, by quoting from the printed record, pages 46 and 47, two extracts from the Report of the Commissioner of Internal Revenue.